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OF THE

SOCIETY OF COMPARATIVE LEGISLATION.

EDITED FOR THE SOCIETY BY

SIR JOHN MACDONELL, C.B., LL.D.,

AND

EDWARD MANSON, Esq.

"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῃ καὶ τὸ χρήσιμον."—Arist. *Pol.* II. 1.

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CONTENTS OF No. XXIV.

	PAGES
1. Council and Executive Committee of the Society .	205–208
2. Heinrich Lammasch: Portrait and Sketch . . By Prof. Redlich.	209–210
3. Town Planning . . . . . By R. E. Willcocks, Esq.	211–219
4. The Legal Interpretation of the Constitution of the Commonwealth.—Part I. . . . . By A. Berriedale Keith, Esq.	220–242
5. The Indian Councils Act, 1909 . . . . . By Sir Courtenay Ilbert, K.C.B., K.C.S.I.	243–254
6. Notes on the Presumptions of Death and Survivorship in England and Elsewhere . . . . By H. A. de Colyar, Esq. K.C.	255–277
7. The Hague Conference on Bills of Exchange . By Sir Mackenzie Chalmers, K.C.B., K.C.S.I.	278–284
8. Notes on Land Taxation in England . . . By Wallwyn P. B. Shepheard, Esq., M.A.	285–287
9. A School of International Law . . . . . By W. R. Bisschop, Esq., LL.D.	288–293

PAGES

10. MERCHANT SHIPPING LEGISLATION OF THE EMPIRE . 294–299
By A. BERRIEDALE KEITH, ESQ.

11. JURISDICTION AGAINST FOREIGN STATES 300–303
By JULIUS HIRSCHFELD, ESQ.

12. REVIEW OF LEGISLATION, 1909:

INTRODUCTION 308–310
FOREIGN LEGISLATION 311–339
BRITISH EMPIRE 340–485
INDEX TO LEGISLATION 486–511

18. NOTES:

Comparative Law in Blue-Books 512
The Status of English Companies in Egypt 513
A Soldier's Will 514
The "Jahrbuch des Oeffentlichen Rechts" 515
The Second Edition of Burge: Marriage 516
The Agenda of the Coming Imperial Conference 516
"American International Law" 518
International Association of Advocates 519
Unworthy Heirs in Roman-Dutch Law 519

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PROFESSOR HEINRICH LAMMASCH.

[*Contributed by* PROFESSOR REDLICH.]

PROFESSOR HEINRICH LAMMASCH, the new President of The Hague Tribunal, comes from an old Austro-German stock, having been the son of a lawyer in the small town of Seitenstetten in Lower Austria in the year 1853. Having taken his degree of a Doctor juris utriusque in the University of Vienna in 1876, he travelled the following year through Germany and England, became in 1878 Lecturer (Privatdozent) for Criminal Law and Procedure in the Law Faculty of the University of Vienna, and in 1882 Extraordinarius Professor of the same branch of Legal Science. In this time he published his first writings: 1879, a treatise on the Attempt of Crime (*Ueber den Versuch des Verbrechens*); 1882, a book under the title *Ueber die Auslieferung* (On Extradition). This work soon after its publication was translated into French. From 1885 to 1889 Professor Lammasch taught as Ordinarius Professor at the University of Innsbruck; in the latter year he was called back to his mother university of Vienna, since which time he has occupied the chair of Ordinarius Professor of Criminal Law and Procedure, International Law and Philosophy of Law. Whereas Lammasch in his first studies and writings showed himself more inclined to the traditional view of Criminal Law from a philosophic and speculative standpoint, his first experience of English institutions gave him a valuable impulse to come nearer to the practical and legislative problems of modern criminology. One of the first-fruits of this change of views was an essay, published in 1878, on the Reformatory School of Redhill near London, at that time a great achievement in this special field of Social and Criminal Reform. Professor Lammasch, having become the most influential teacher of Criminal Law in Austria, turned his attention and his work to the great tasks of legislative and administrative reforms of Penal Law and Procedure. At the same time he devoted a great part of his literary and academic efforts to support that powerful development of International Law in theory and practice which has been witnessed by us all in the last twenty years. By a great number of essays, articles, and treatises published in the leading scientific reviews of Germany, Austria, and France, he took a prominent part in the reform movement in both Criminal Law and International Law. He published a treatise, *Auslieferungspflicht und Asylrecht*, in 1886, and an essay on Treaties of International Legal Assistance (*Rechtshilfeverträge*) in

Holtzendorff's *Handbuch des Volkerrechtes*, 1887. A very useful fruit of his academic work was his book *Grundriss des österreichischen Strafrechtes* (Outline of Austrian Criminal Law), which has just been published in a fourth edition.

His important literary and theoretical work opened to Professor Lammasch the way for a very successful activity in the legislative and diplomatic spheres. He was nominated in 1899 one of the delegates of Austria-Hungary to the first Hague Peace Conference and there he became a member of the Committee of Examination, which really has done most of the work of the Conference; he worked there together with men like Bourgeois, Lord Pauncefote, Holls, Zorn, Martens, Asser, Descamps, Count Nigra, and Odier. In 1902 the Austrian Government again entrusted to Professor Lammasch part of a very important diplomatic task: he was sent to Brussels as adviser of the Austrian representatives at the International Sugar Conference, which abolished by agreement of all States concerned the institution of Sugar export-bounties. In the same year Professor Lammasch, for the first time, was called upon to take part in international arbitration; he decided the Venezuelan case between Great Britain and the United States. In the year 1905 Dr. Lammasch, together with the Chief Justice of the United States, Melville Fuller, and Savornin Lohmann, decided the Muskat case. During the last two years he has been called upon to perform one of the greatest tasks which international arbitration has solved: as President of the Court of Arbitration at The Hague he gave the decision in the famous Newfoundland Sea Fisheries question between Great Britain and the United States and in the Orinoco Boundaries question between Great Britain and Venezuela.

Not less conspicuous is the work done by Professor Lammasch in the domain of Austrian legislation during the last decade, especially so far as Criminal Law is concerned. It was mostly through Dr. Lammasch's exertions that the draft of a new Penal Code, which followed very much the old lines of German theories and neglected the modern ideas of Criminal Law, was withdrawn in 1897 and that the work was begun on an entirely new basis. He was then a member, and later on President, of the Special Commission nominated to elaborate a new Penal Code; in the year 1909 this Draft Code was published, and embodied in many parts the best experiences and ideas of foreign progressive legislation. Since 1899 Professor Lammasch has been a member of the Upper House of the Austrian Imperial Parliament and figures there as one of the leading men of the Conservative Party, to which he belongs.

TOWN PLANNING.

[*Contributed by* R. E. Willcocks, Esq.]

I. Introduction.

In the following short comparative study of town planning schemes in various countries in Great Britain, Germany, New Zealand, Sweden, the Transvaal and the Orange River Colony, it will be remarked that the Transvaal and the Orange River Colony have been treated separately and not directly compared as has been done with the other four countries. This differential treatment is due to the fact that the laws dealing with town planning in the two South African states contemplate a different meaning than the Acts applying to the other older and smaller countries. In the South African Acts, the word "township" is invariably used—this word is not to be found in any of the other Acts, whether British or its equivalent in any foreign Act—and the Acts are called "Townships Acts," and from this it may be gathered that the State controls the number of towns to be built and also controls the situation of such towns, while at the same time it makes regulations as to sites, open spaces, and laying out generally.

Regarding the legislative measures applying to Great Britain, Germany, New Zealand, and Sweden, it will be seen that there is not very much difference in the general idea, which is to safeguard the inhabitants of towns from living in overcrowded, sunless, and unhealthy areas. The difference of procedure is, of course, extremely varying, and Great Britain has a system of procedure which is entirely her own and one which would hardly be applicable in a country such as New Zealand although a British Dominion, on account of the different circumstances of the two countries.

In Germany the Prussian Act contemplates the reforming of cities already in existence, which is not contemplated by the British Act, unless it may be said to apply to areas unfit for human habitation and condemned as such under the housing part of the Housing and Town Planning Act, 1909.

The system of holding a local inquiry by an Inspector or an official of the central administrative Department of the State is to be found only in Great Britain and in the Orange River Colony. In other countries no open inquiry is held, and the persons or bodies interested have not the same latitude for stating their views of the proposed town planning scheme and appealing to the Central State Department (in Great Britain the Local Government Boards for England and Scotland) in case of an unsatisfactory

decision by the local authority. There is provision in the British Act (s. 58 (1) to (16)) for compensation to be paid to any person whose property is injuriously affected by a town planning scheme, and a remarkable fact in this part of the British law is that when a property is increased in value by the making of a town planning scheme the local authority may recover half the increased value of the property. In all matters of dispute as regards alleged injury to or increase in the value of the land the Local Government Board of either England or Scotland has statutory powers to appoint a single arbitrator to settle the facts at issue.

In conclusion it is interesting to note that the Swedish and Prussian Acts were passed in 1874 and 1875 respectively. In 1875 the English Public Health Act was passed, and this measure was a great step in advance, inasmuch as it increased the powers already given to the local authorities to govern and order their towns. It should be especially noted that there is no English town planning Act as such; in New Zealand town planning is part of the land policy of the Government and is therefore a portion of the Land Act.

The same principle partly applies to the Prussian Act, but in the Prussian Act, town planning is the principal part of the Act, and housing takes a minor position. The German ministerial orders based on the Act deal very largely with housing questions. These ministerial orders are exceedingly comprehensive and their rules very rigid and stringent as regards the width of streets and the necessity for light and air. It should be noted that the German Act cited in this article applies in its entirety only to Prussia, being really an Act of the Prussian Parliament (not the Imperial Parliament or Reichstag); but the States forming the German Empire have adopted the Act almost without alteration, although in some cases slight changes have been made. In Saxony, for instance, different regulations are in force as regards roads in urban districts.

The Swedish town planning regulations are contained in an Act called Building Law for Towns, and are such as suit a northern and comparatively sparsely populated country. There is nevertheless a very strong general resemblance between the Swedish and Prussian Acts, and the section of the Swedish Act dealing with the actual laying out of the town is almost identical with the corresponding section in the Prussian Act.

In France there is as yet no general Town Planning Act, but in Appendix 1 to the Beauguire Town Extension Act, 1910, there are various rules and regulations set out, which require the municipal authorities of towns of over 10,000 inhabitants to prepare a town extension and improvement plan. The regulations as to the position of public squares, gardens, open spaces, and the width of roads resemble the legislative measures in force in the other countries dealt with in this article. These regulations are not to become law until 1915. One curious provision contained in these rules is that a plan once approved remains in force for a period of thirty years,

after the expiration of which time the plan must be renewed. This provision seems to be contained only in the French Act.

In the following pages the Acts and Ordinances of Great Britain, Germany, Sweden, and New Zealand have received particular attention under various headings which have been adapted from the British Act.

II. Preparation and Approval of Town Planning Schemes.

Great Britain.—A town planning scheme in Great Britain may be made as respects any "land which is in course of development or appears likely to be used for building purposes,"[1] which expression includes "land likely to be used as or for the purpose of providing open spaces, roads, streets, parks, pleasure or recreation grounds."[2]

The Local Government Board of either England or Scotland have power to decide whether land is likely to be used for building purposes, and from their decision there is no appeal.[3] Before a town planning scheme is approved notice must be published in the *London* or *Edinburgh Gazette* that the Board intend to give their approval. If within twenty-one days of such notice any person or authority interested objects, the draft order of the Local Government Board is to be laid upon the table of both Houses of Parliament. If within thirty days either of the Houses presents a petition to His Majesty against the draft order, no further proceedings can be taken thereon, without prejudice to the making of any new draft scheme.[4]

Germany.[5]—In Prussia the making or alteration of streets and street lines and building lines (Strassen- und Baufluchtlinien) has to be arranged and carried out by the municipal executive with the concurrence of the elected members of the Local Council (Gemeinde).[6] The police (Bau-Polizei[7]) can demand the fixing of such lines, and care must be taken for proper facilities as regards traffic, arrangements for avoiding fires, and public health (Forderung des Verkehrs, der Feuersicherheit und der öffentlichen Gesundheit). If the plan affects a railway-station, a fortress, or if public rivers, highways, railways or railway stations fall within the compass of the proposed town planning scheme, the Bau-Polizei must notify the Ministers of Railways and of War and other persons concerned.[8]

[1] Housing and Town Planning Act (Great Britain), 1909, s. 54 (1).
[2] *Ibid.* s. 54 (7). [3] s. 54 (7). [4] s. 54 (4).
[5] As the Prussian Law of 1875, "betreffend die Anlegung und Veränderung von Strassen und Platzen in Städten und landlichen Ortschaften," has been adopted almost wholly by all the German States, it is not necessary to mention individually the various laws of the countries forming the German Empire.
[6] Prussian Town Planning Act, 1875, s. 1.
[7] Bau-Polizei translated literally means Building-Police. The police regulate building operations in Germany, and leave to erect any building or house has to be obtained from them.
[8] Prussian Town Planning Act, 1875, s. 6; cf. s. 4.

In Great Britain bodies or persons interested in any lands or roads affected by the scheme would have opportunities of placing their views or objections before an officer of the Local Government Board at a public local inquiry, and of appealing direct to the Local Government Board[1]; and if the town planning scheme affects light railways, commons or open spaces[2] or Royal parks,[3] notice must be sent to the Board of Trade, the Commissioners for Light Railways, the Board of Agriculture and Fisheries, and the First Commissioner of Works. In Germany, however, if the Bau-Polizei refuse to consent to the scheme prepared, there is not, as in Great Britain, an appeal to a Department of State.[4]

Sweden.—According to Swedish law, "there shall be prepared for every town a plan for the regulation of its general arrangement and of the buildings within it."[5] This plan shall regulate not buildings and streets alone, but markets and other public places,[6] and due regard is to be had[7] for traffic, public health, and avoiding fires, and sites are to be provided for open spaces and harbours. The Town Commissioners are to deal with town plans, but before adoption Royal assent must be obtained.[8]

New Zealand.—New Zealand being a new country with a comparatively small population, the Acts which have been passed to regulate town planning do not contain the same elaborate machinery for the approval of a scheme by the Central State Authority as exists in Great Britain, and in a lesser degree in Germany and Sweden. The legislature of the Transvaal has seen fit to impose regulations and rules more in accordance with the British Town Planning Act, probably in consequence of the less agricultural nature of the Transvaal as compared with New Zealand.

In New Zealand the Act which regulates town planning[9] deals with the subject in a minor sense—indeed the town planning portion of the statute comprises only four sections. The Town Council—if there is one—has the power of administering the town planning sections of the Land Act,[10] and in every case where any allotments or sections or blocks of land are to be sold or are advertised for sale as a town, the proposed name of such town, showing the roads and the width thereof respectively, and the reserves for open spaces in such town, shall be prepared by an authorised surveyor, and shall be approved by the Governor prior to sale.[11]

[1] British Act, 1909, s. 54 (4): Procedure Regulations, May 3, 1910.
[2] Cf. Local Government Board regulations of May 3, 1910, Art. xxix.
[3] *Ibid.* Art. xxviii. [4] *Ibid.* s. 74, Art. xxviii.
[5] Swedish Building Law for Towns Act, 1874 (Part 2), s. 9 (1). [6] *Ibid.* s. 9 (1).
[7] *Ibid.* s. 10; cf. British Act, 1909, s. 54 (7). Prussian Act, 1875, s. 10.
[8] Prussian Act, 1875, s. 10. (Royal assent appears to be the approval of the scheme by the Home Office authorities.)
[9] New Zealand Land Act, 1908 (Consolidation).
[10] New Zealand Land Act, 1908, ss. 15 and 16. These sections are consolidated from Land Act, 1892, No. 37, s. 17; Land Act, 1902, No. 57, s. 2.
[11] New Zealand Act, 1908, s. 16.

III. The Contents of Town Planning Schemes.

Great Britain.—The Local Government Board of either England or Scotland may prescribe general provisions [1] (or in certain cases separate sets of provisions) for carrying out the general objects of town planning schemes, and in particular the laying out or treatment of streets, roads, buildings, open spaces, historical objects, sewerage, the sewage disposal, lighting and water supply, etc.[2]

Where the land connected with a scheme is in the area of more than one authority, or is in the area of an authority by whom the scheme was not prepared,[3] the responsible authority for the execution of any works to be executed by a local authority may be either one of these authorities or for certain purposes another local authority or a Joint Board (this Joint Board is specially constituted).[4]

Germany.—By an order of the Prussian Minister of Public Works,[5] which is based upon the Prussian Act of 1875, the Minister points out that it is desirable to have gardens facing the streets in residential quarters, and it is as well to encourage gardens in business quarters, as it facilitates the widening of the road in case of increase of traffic. The order also says: "Care must be taken for keeping clear from building a sufficient number of open spaces of adequate size for ornament, playgrounds, and parks, as well as for public buildings of the future." [6]

Sweden.—The Swedish Act in many ways resembles the German, and as regards this portion the resemblance is very marked: only the wording of the Swedish Act is such that it is possibly capable of a wider meaning than the Prussian Act. The Swedish Act enacts that care shall be taken when preparing a town planning scheme that roads shall be so designed and laid out as to ensure the safety of traffic, that provision shall be made for light and air, and that houses shall be constructed as to be as far as possible safe from fire.[7] The clause further lays stress on the necessity for open spaces and enacts that sites must be provided for harbours and markets if required. The local authorities are encouraged to lay out back gardens, which when once made must not be built upon.[8]

New Zealand.—In all towns which are laid off on any Crown lands or upon private lands outside the borough [9] the main roads must be at least

[1] British Act, 1909, s. 55 (1). [2] *Ibid.* Sched. 4. [3] s. 55 (3).

[4] Cf. Prussian Act, 1875, s. 9: "If several places participate in the adoption of lines (Fluchtlinien), the respective municipal governments (Gemeindeverstandten) must discuss the matter together. A district committee (Kreisausschuss) will decide those points respecting which agreement is not come to."

[5] An order (Erlass of the Prussian Minister of Public Works, Herr Wirk-Geheimrat Breitenbach) dated December 30, 1906.

[6] The latter part of the order is of interest because it deals with housing, the height of buildings and dwellings for the working classes.

[7] Swedish Act, 1874, s. 12 (1). [8] *Ibid.* s. 12 (2).

[9] New Zealand Land Act, 1908, s. 15.

ninety-nine feet wide and the side roads sixty-six feet wide.[1] In towns on Crown lands one-tenth of the area in the town must be laid out as open spaces, and this shall be vested in the Governor-General, and also certain plots should be reserved for municipal property.[2]

An important and original provision occurs in this Act,[3] namely, that on the side of the town opposite to that from which prevailing summer winds blow, a sufficient piece of land shall be reserved for depositing refuse. Provision is also made for cemeteries and gravel-pits in the proximity of a town.[4] The Government may reserve any land at the disposal of His Majesty within any existing borough or town district under s. 15, although such borough or town district was laid out before the passing of this Act.[5]

IV. Procedure: Regulations.

Great Britain.—The Local Government Board of either England or Scotland in Great Britain is the authority for making regulations generally for procedure and for making regulations as regards preparing, submitting, and adopting town planning schemes. The Act expressly aims at securing the co-operation of the authorities, or of an authority and the owner of the land, and for this purpose the regulations are to provide for conferences[6] at every stage of the proceedings.[7] It also sets forth that anterior to and for the purpose of applying to the Local Government Board for authority to prepare or adopt a scheme,[8] plans and estimates must be submitted for inspection and notices of such intended application must be published.[9] It is further ordered that before approval is given further plans and estimates shall be submitted to the Board and notices published and objections by persons affected be added.[10] If the Board approve the scheme, the local authority shall publish notices to that effect.

The procedure in Great Britain appears to be very much more detailed and elaborate (apparently to give full scope for appeal from any decision made by a local authority) than in foreign countries.

Germany.—In Germany the administration of the Town Planning Act is put into the hands of the Prussian Minister of Commerce.[11] The Minister

[1] New Zealand Land Act, 1908, s. 15.

[2] The Governor-General may in certain instances, *e.g.* in old or partly built towns (of seven years), modify these provisions.

[3] Land Act, 1901, s. 16 (2, *c*).

[4] New Zealand Land Act, 1908, s. 15 (2, *c*). [5] *Ibid.* s. 17.

[6] It should be noted that the Local Government Boards for England and Scotland are two separate and distinct bodies; the former is an independent Department of State, while the latter is a Department in connection with the Secretary for Scotland's Office.

[7] British Act, 1909, s. 56 (1). [8] *Ibid.* s. 56 (2, *a*).

[9] *Ibid.* s. 2, *c*. Sched. 5 and Local Government Board regulations, May 3, 1910 (Part I).

[10] Local Government Board regulations, May 3, 1910, Art. 12.

[11] Prussian Act, 1875, s. 20. The administration of this Act has been transferred to the Minister of Public Works (Oeffentliche Arbeiten) by a proclamation (Allerhöchste Erlassung) of August 7, 1878.

from time to time, when occasion requires it, issues an order in the form of a general letter of advice to local authorities under his control. A final decision [1] in the higher jurisdiction rests in cases of ss. 5, 8 and 9 [2] with the Minister of Commerce, and in cases of ss. 12 and 15 [3] with the Ober-Präsident.[4] An appeal against decisions of the District Committee in cases of ss. 5, 8 and 9 may be made by any one concerned to the Bezirk Council within a period of twenty-one days.[5]

Sweden.—The Swedish law compels the authorities of all towns to draw up a plan "for the regulation of its general arrangements, and of the building within it." The plan shall regulate not only the buildings but the streets, the markets, and other public places.[6]

In the event of a town out-growing the original planning,[7] all matters dealing with the preparation of town plans are in the hands of the local authority, but the plan has to receive Royal sanction before it can be acted upon.[8] As in Great Britain, exact and careful plans have to be submitted to the Home Office. There does not appear to be any provision for an appeal to the Home Office or the Sovereign by any person or persons interested in or affected by the scheme.

New Zealand.—In the New Zealand Act, with the exception of the proviso in s. 16 (see Part 1), the Town Council seems to be given a free hand in the matter of town planning schemes, and the Governor-General through the Minister of Lands has power to enforce the provisions of this Act (see Part 2). In towns or Crown lands the open spaces vest in the Government for the benefit of the people.

V. Power to Enforce Scheme.

Great Britain.—The powers to enforce a town planning scheme are very wide.[9] The local authority responsible for the scheme are empowered (after giving notice as stated in the scheme which is such as to contravene the scheme [10]) "to remove, pull down, or alter any building or other work in the area included in the scheme," and also "may remove, pull down, or alter any building or other work in the erection or carrying out of which any provision of the scheme has not been complied with."

[1] Prussian Act, 1875, s. 18.

[2] S. 5 deals with the plan which the Bau-Polizei have to give in all cases of the town planning schemes: see Part 5. S. 8 enacts that the District Committee must decide respecting all objections if an agreement is not arrived at between the Municipal Government and the objectors. S. 9: this section orders that if more than one authority is involved, the authorities concerned shall meet to arrange matters.

[3] S. 12: this deals merely with the making of by-laws and the procedure of getting them confirmed. S. 15: this section deals with by-laws as applied to various conditions.

[4] The Ober-Präsident is the administrator of a province.

[5] Prussian Act, s. 16.

[6] Swedish Act, Part 3, s. 9. [7] *Ibid.* s. 9 (4). [8] s. 10.

[9] British Act, 1909, s. 57 (1, *a*). [10] *Ibid.* s. 57 (1, *a*).

To prevent delay[1] in the execution of any work contained in the scheme, the local authorities may themselves carry out the work required. If a question arises as to whether a building or work contravenes a scheme, the matter shall be referred, unless the parties otherwise agree, to the arbitration of the Local Government Board of either England or Scotland, and from the Board's decision there is no appeal.[2]

Germany.—The German law on the subject of enforcing town planning schemes is more stringent. When the town planning scheme has been prescribed,[3] the owner of the land is definitely subjected to the restriction of any building beyond the line (Fluchtlinie) or new buildings, or the alteration or completion of existing buildings can be prohibited.[4] The local authority are also empowered, as soon as the scheme is prescribed, to take the areas of land indicated by the street lines (Strassenfluchtlinien).

Sweden.—The Swedish law as regards enforcing town planning schemes is extremely definite.[5] The Act opens with the following words: "It shall be the duty of the surveyors of buildings to see that this Law of the Urban Building By-laws is duly enforced and to deal with all those matters to which the Law and the By-laws apply, and which do not come into the province of another authority." The surveyors are also enjoined[6] to improve the plan, if necessary, and are empowered to compel compliance with the scheme which has been duly authorised.

New Zealand.—In the New Zealand Act there are no definite powers accorded to the Governor-General to enforce any scheme.[7] Where land is being sold for the purpose of laying out a town, an authorised surveyor has to present a general scheme, which the Government may allow or not as it pleases. It is presumed the High Court would enforce any legitimate requirements of the Government in such a case.

VI. Transvaal and Orange River Colony.

The first town planning legislation to be introduced by the Government of the Transvaal since the Colony became British was by Proclamation in 1905.[8] Since that date three other Township Acts have been passed by the Parliament of the Transvaal.[9]

The main Act of the Orange River Colony was passed in 1909,[10] and is very similar to the Transvaal Act in its general provisions as regards laying

[1] British Act, 1909, s. 57 (1, *b*).
[2] *Ibid.* s. 57 (3).
[3] Prussian Act, 1875, s. 8.
[4] *Ibid.* s. 11.
[5] Swedish Building Law for Towns Act, 1874, s. 1.
[6] *Ibid.* s. 2.
[7] New Zealand Land Act, s. 16.
[8] Ordinance No. 19 (1905), repealed by Act No. 33 (1907).
[9] Transvaal No. 33 (1907), No. 34 (1908), No. 30 (1909).
[10] Orange River Colony Township Act, 1909, repealing an Act of the Orange Free State (1874).

out and proclaiming townships. The special provisions for mining districts necessitate special clauses in the Transvaal Act[1] which are not required in the Act which applies to the Orange River Colony—a country which contains relatively small mining interests.

In both Colonies, when it is required to found a township, a formal application must first be lodged, and the sanction of the Colonial Secretary for the Colony must be obtained in both cases; also the consent of the Surveyor-General must be sought.

In the Orange River Colony application is made to the Township Commission, and in the Transvaal to the Township Board. The functions of the two are similar, and the Surveyor-General in the Orange River Colony has a right to be represented on the Commission, while the Surveyor-General of the Transvaal has a statutory claim to be Chairman of the Township Commission. Provision is made in both Colonies for laying out healthy towns with open spaces, which shall ultimately become the property of the municipality. In these provisions the legislative enactments of all those States which have adopted town planning schemes and laws are very similar.[2]

[1] Transvaal No. 34 (1908).

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THE LEGAL INTERPRETATION OF THE CONSTITUTION OF THE COMMONWEALTH.

[*Contributed by* A. Berriedale Keith, Esq.]

PART I.

The question of the legal interpretation of the Commonwealth Constitution presents much interest both by reason of the importance of the issues at stake and by the vital difference of opinion as to the fundamental principles of interpretation which have been adopted by the High Court of the Commonwealth and by the Judicial Committee of the Privy Council. It is true that to all intents and purposes the Judiciary Act, 1907, of the Commonwealth has prevented further interference by the Privy Council in the discussion of questions involving the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States, or of the constitutional powers of any two or more States, but that Act is powerless to undo what has been done or to reverse the decision of the Privy Council in *Webb* v. *Outtrim*.[1] The Privy Council might indeed be persuaded, as Prof. Harrison Moore[2] suggests, to act on their undoubted power of reconsidering their judgments and reverse their decision, but no one who weighs the grounds on which that decision was based will think that eventuality any more probable than that the High Court will give the Privy Council an opportunity, by exercise of the right of granting a certificate under s. 74 of the Constitution,[3] of having before it a question involving the limits of the constitutional powers of the Commonwealth and a State or States. Nevertheless, so long as the decisions of the High Court and the Privy Council remain unreconciled, it will be impossible to say that the interpretation of the Constitution rests on any sure foundation.

The State Courts and Federal Jurisdiction.—The opposition of view between the two authorities appears even in what might have been held to be the simple question of the relation of the State Courts to federal jurisdiction. In the case of all the States there are in force Orders-in-Council, made under statutory powers, which prescribe the conditions on which appeals lie from the Courts in question to the Privy Council, and in addition

[1] [1907] A.C. 81. [2] *Commonwealth of Australia*, 2nd ed. p. 239.

[3] On the duty of the High Court not to grant a certificate, cf. *Deakin* v. *Webb*, 1 C.L.R. 585, at pp. 621 *seq.*; *Flint* v. *Webb*, 4 C.L.R. 1178.

there is the undoubted power of the King, by virtue of the royal prerogative, to grant special leave to appeal from any decision of a Court of Appeal in any colony, fortified under the Imperial Act of 1844 by a statutory right, to grant leave to appeal from the judicial decision of any Court whatever, whether a Court of Appeal or not. When the Commonwealth Constitution came into force, the State Courts were required by s. 5 of the Commonwealth of Australia Constitution Act, 1900, to give effect both to that Act and to any Acts of the federal legislature as part of their ordinary duty, nor is there any doubt that to these Courts in the exercise of this duty the provisions as to appeal contained in the various Orders-in-Council fully applied.[1]

By the Commonwealth Judiciary Act, 1903,[2] however, the situation was materially altered, at any rate in the view of the Commonwealth Parliament. That Act by s. 39 deprived the State Courts altogether of federal jurisdiction, and then proceeded immediately to revest them with such jurisdiction in certain cases, subject to the proviso that the only appeal should be that to the High Court. The power exercised by the Commonwealth Parliament was based on s. 77 of the Constitution, which permits (sub-s. ii) the Parliament to define the extent to which the jurisdiction of a federal Court shall be exclusive of that which belongs to a State Court, and (sub-s. iii) to invest any Court of a State with federal jurisdiction. On the strength of this section of the Judiciary Act it was argued, both before the Supreme Court of Victoria[3] and before the Privy Council,[4] that the right of appeal to the Privy Council under the Order-in-Council of 1860, regulating appeals from Victoria, was taken away by the Judiciary Act, and that an appeal could only be taken to the Privy Council by special leave.

This view was decisively rejected by the Supreme Court of Victoria, and the Privy Council repeated part of the judgment of the Court on this topic with approval. But it is significant that it by no means quotes the whole of that judgment, nor is it probable that it accepted it all.[5] In the Victorian Court Hodges J. argued that the jurisdiction which the State Court possessed it possessed in its own right as before the Judiciary Act was passed, and he evidently regarded the attempt of the Commonwealth Parliament to deprive the Supreme Court of federal jurisdiction and then to restore it as a mere nullity: all the Commonwealth could do was to confer federal jurisdiction in matters where otherwise the State Court could have none, as, for instance, suits against the Commonwealth, or another State, or the issue of a mandamus to a federal officer, and so forth. This view is not

[1] Cf. 4 C.L.R. 1087, at p. 1141, *per* Isaacs J.

[2] The question arose also on the earlier Claims against the Commonwealth Act, 1902, investing State Courts with federal jurisdiction in one regard, but in *Hannah* v. *Dalgarno*, 1 C.L.R. 1, the matters at issue were not finally decided; but see p. 10.

[3] [1905] V.L.R. 463, at p. 467. [4] [1907] A.C. 81.

[5] Cf. Harrison Moore, *Commonwealth of Australia*, 2nd ed. p. 231.

alluded to in the judgment of the Privy Council, and it is certain that it is not tenable. It is perfectly clear from s. 77 (ii) of the Constitution, read with s. 76, that the Commonwealth Parliament could deprive the State Courts of the federal jurisdiction which they were exercising before the passing of the Judiciary Act. That jurisdiction they exercised as State Courts—just as they from time to time as State Courts interpreted Imperial Acts without becoming Imperial Courts.[1] It was taken from them by s. 39 of the Judiciary Act, and though it was in substance restored, it was restored as federal jurisdiction exercised by a federal Court. But that fact clearly made no difference to the Order-in-Council permitting appeals. The Court was the Supreme Court of the State: it was not a new Court: it was the old Court invested with a new jurisdiction, and in the absence of express words or necessary implication in the Constitution, the appeal from the Supreme Court applied to the Court in its new jurisdiction, just as it would apply if any fresh jurisdiction were given to the Court by an Imperial or a State Act. This is clearly the determination of the Judicial Committee in *Webb* v. *Outtrim*.[2]

The interpretation here put upon the decision of the Privy Council is certainly that put upon it by Higgins J. in his dissenting judgment in *Baxter* v. *Commissioners of Taxation, New South Wales*.[3] He there fully recognises the right of the federal Parliament to exclude State Courts from federal jurisdiction, but he held that if the Supreme Court of a State become seised of a cause, and decided it, the defeated litigant had under the British Acts 9 Geo. IV. c. 83, and 7 & 8 Vict. c. 69, and the Orders-in-Council made thereunder, a right to appeal to the King in Council, no matter whether the Supreme Court derived its jurisdiction from the State Parliament or from the British Parliament or from the federal Parliament, and no matter what the federal Parliament might enact to the contrary. The majority of the Court,[4] however, took the view, though not very strongly, that the Commonwealth Parliament had in effect created a new Court, and that they were empowered, in creating a new Court, to define what appeals should be allowed, subject always to the right of the Crown to grant special leave to appeal, for they considered that s. 39 was intended to recognise the right of the Crown to grant special leave to appeal. The same view seems to have been held by Isaacs J.,[5] but the main portion of his remarks on the subject is concerned with the desire to show that the exercise of federal jurisdiction, as given by s. 39 of the Judiciary Act, is different from the exercise of such jurisdiction

[1] Cf. 4 C.L.R. 1087, at p. 1141, *per* Isaacs J.; Griffith C.J. at pp. 1137, 1138, leaves it open whether before the Judiciary Act the jurisdiction was federal or State. Of course, even before that Act, in some cases federal jurisdiction proper had been conferred on State Courts, *e.g.* as regards claims against the Commonwealth, *Hannah* v. *Dalgarno*, 1 C.L.R. 1, at pp. 9, 10.

[2] [1907] A.C. 81.

[3] 4 C.L.R. 1087, at pp. 1162, 1163. Cf. 1 C.L.R. 1, at p. 6.

[4] 4 C.L.R. 1087, at pp. 1137-9.

[5] 4 C.L.R. 1087, at pp. 1140 *seq.*

by a State Court as a State Court under the authority of s. 5 of the Constitution, a proposition which the Privy Council would no doubt have accepted.

Since the discussion of the case in question the powers of the State Courts in the federal jurisdiction bestowed upon them have been diminished by withdrawing from them any question arising which involves the limits *inter se* of the powers of the Commonwealth and a State or States and of two or more States. This is effected by the Judiciary Act, 1907, and it cannot be cited as proving that the view of the position laid down by the Privy Council is accepted in Australia, for admittedly the appeal by special leave remained untouched even by the Judiciary Act, and that would have been sufficient to justify the passing of the Judiciary Act, 1907. It appears also that the late Government of the Commonwealth remained firm in their acceptance of the view laid down by the High Court. As a result of the Colonial Conference of 1907, the rules regulating appeals from the oversea Dominions to the King in Council were to be assimilated, and accordingly rules were drawn up in a new form and adopted by four of the Australian States. Very tardily the Government of the Commonwealth protested against the new rules applying to the Courts in the exercise of federal jurisdiction under the Judiciary Act, and quoted the decision of the majority of the Court in *Baxter's Case* against the proceeding, but the Colonial Office pointed out that this view was opposed to that laid down by the Privy Council in *Webb* v. *Outtrim*,[1] and no distinction between the two kinds of jurisdiction appears in the Orders-in-Council since issued for Victoria and Tasmania.[2]

The Appellate Jurisdiction of the High Court.—The appellate jurisdiction of the High Court extends under s. 73 of the Constitution to hear appeals *inter alia* from the Supreme Court of any State or of any other Court of any State "from which at the establishment of the Commonwealth an appeal lies to the Queen in Council." It is possible for the Parliament to limit this right of appeal, but it cannot do so in such a manner as to prevent the High Court from determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lay to the Queen in Council. The High Court in the case of *Parkin* v. *James*,[3] after an elaborate argument, decided that the power of the High

[1] See Parliamentary Papers, Cd. 5273, pp. 39-41.

[2] It may be mentioned that no attempt has yet been made by the Commonwealth Parliament to limit the classes of cases in which the Privy Council may grant special leave to appeal from a judgment of the High Court. It should be noted that it is perfectly clear that no colonial legislature can under its general power of legislation affect the right of appeal by special leave to the Crown in Council (except the Commonwealth Parliament, when the right is given by s. 74 of the Constitution and the Parliament of the Union of South Africa by s. 106 of the South Africa Act, 1909). That lies not in any special sanctity of that prerogative (cf. Harrison Moore, *Commonwealth of Australia*, 2nd ed. pp. 232, 233), but simply from the fact that 7 & 8 Vict. c. 69 gives a statutory right of appeal by leave which overrides every local Act, and deprives the Canadian Act, which purports to bar appeals in criminal cases, of technical validity.

[3] [1905] 2 C.L.R. 315.

Court extended to hearing appeals from single judges of the Supreme Courts of the States exercising the jurisdiction of the Supreme Court. Against this view it was argued very naturally that the purpose of the Constitution was to make the appeals to the High Court come from the full bench of the Supreme Court, just as appeals normally went to the Privy Council only after they had been before the full Court. It was pointed out in support of the view that the interpretation of the words Supreme Court should be read in light of the fact that it was coupled with other Courts from which an appeal lay, and an appeal lay of right under the Orders-in-Council only from the full Court. It was admitted that State Acts frequently sanctioned the exercise of the jurisdiction of the Supreme Courts by single judges, and declared the judgments of a single judge so acting to be judgments of the Supreme Court; but though the force of this argument was admitted, it was pointed out that if it were pressed then the State Parliaments, by abolishing the State Courts *eo nomine*, could defeat the right of appeal to the High Court altogether. The High Court naturally declined to accept this argument, and suggested that the term Supreme Court might well be held to include Courts of similar functions even if of different name. They were unable to accept the view that the term Supreme Court must be interpreted to mean the full Court, and they could not hold that the other Courts to which appeals lay at the establishment of the Commonwealth meant Courts to which appeals lay without special leave.

The right indeed of the High Court to hear appeals from a single judge, if sitting as the Supreme Court, is absolutely clear, and it was affirmed by the Privy Council when the case was brought before it in *Blake* v. *Bayne*.[1] It is true that the plan of the Constitution as to such appeals was clearly meant to secure that the appeals should not come merely from one judge, thus converting the High Court into a substitute for the full Courts of the States, but it is equally clear that the Constitution made no adequate provision to attain this end. Much more difficult is the question what is meant by other Courts to which an appeal lay to the Queen in Council at the establishment of the Commonwealth. In *Parkin* v. *James*[2] the High Court held that the term could not be restricted to cases where an appeal lay as of right, but must include cases where an appeal lay by special leave. Yet this interpretation leads into a serious dilemma, for it is quite certain that the Privy Council could entertain a direct appeal in 1900 from every possible Court in the States[3] of the Commonwealth if only in virtue of the Imperial Act, 7 & 8 Vict. c. 69, and on the other hand the insertion of the words was no doubt intended to have some signification in limiting the extent of the appeal given to the High Court. It was never contemplated that the exercise of a petty Court in a State of its ordinary jurisdiction should be

[1] [1908] A.C. 371.
[2] [1905] 2 C.L.R. 315, cf. 4 C.L.R. 1178, at p. 1180.
[3] Cf. 2 C.L.R. 315, at pp. 331, 332.

susceptible of a direct appeal to the High Court. Nor, as a mere matter of fact, is there much doubt what the real intention of the Constitution was : in South Australia there existed in 1900 a Court of Appeals, confirmed by a local Act 24 & 25 Vict. No. 5, which consisted of the Governor in Council ; this Court, which was continued because of the difficulties arising out of the attitude of the Supreme Court and especially of Mr. Justice Boothby in the years immediately following the grant of responsible government, has of late years sunk into disuse, but it was no doubt meant in the Constitution to secure that, if its activity were revived and it became as it once was a real Court of Appeals, then the High Court could hear appeals from it, as well as from the State Supreme Court. But in 1900 there was no appeal except by special leave from that Court, for the Order-in-Council of 1860 merely referred to appeals from the Supreme Court. If therefore the term "other Court from which at the establishment of the Commonwealth an appeal lies to the Queen in Council" is interpreted to mean a Court from which an appeal lay as of right, the Court of Appeals in South Australia, which it was no doubt meant to include, will be excluded, and as a matter of fact the phrase will have no content, as there was no other Court than the Supreme Court of the State from which an appeal lay as of right at the establishment of the Commonwealth (the Vice-Admiralty Courts of New South Wales and Victoria are Imperial Courts, not State Courts at all). On the other hand, if the phrase include all it seems to include, it will again have no point, for as an appeal lay by special leave from every Court the addition of the words "from which at the establishment of the Commonwealth an appeal lies to the Queen in Council" will be otiose and absurd.

The difficulties of the position have already forced themselves upon the attention of the High Court in the case of *Kamarooka Gold Mining Company, No Liability*, v. *Kerr and Others*,[1] decided in 1908. It was there sought by the company to appeal direct to the High Court against an order of the judge of the Court of Mines, Victoria, rescinding a previous order which he had made for the winding up of the appellant company. It was argued that the Court of Mines was one which at the establishment of the Commonwealth an appeal lay to the Privy Council by special leave, and that therefore an appeal to the High Court was competent under s. 73 of the Constitution and under s. 35 of the Judiciary Act, 1903. The High Court declined to grant special leave to appeal, the case being one in which under the Judiciary Act such leave was necessary. They recognised that it raised the difficult question of the interpretation of s. 73 of the Constitution, and if there were no other appeal open to the company the question might have been considered. But the company had an appeal to the Supreme Court of the State, and thence if need be to the High Court, and therefore the Court did not think the case one in which they should grant special leave to appeal so that the question of the competency of the appeal should be

[1] [1908] 6 C.L.R. 255.

raised. In point of fact, it would seem impossible to interpret the words of the Constitution in any satisfactory sense, and on the mere legal interpretation the High Court would, until Parliament limits the right, seem to have power to hear appeals in every case. Fortunately the decision of that Court in the case of the Kamarooka Company shows that direct appeals from inferior Courts will not be encouraged: to do so would be to upset the whole scheme of federal and state jurisdiction, but the bad drafting of the Constitution is indeed curious. Probably the point was overlooked by the Imperial authorities in the midst of the much more important struggle over the right of appeal to the Privy Council.

Another difficulty is suggested by the proviso to the exercise of the powers of the Parliament to limit such appeals from State Courts, which forbids the Parliament to deprive the High Court of the power to determine any appeal in any matter in which at the establishment of the Commonwealth an appeal lay from the State Court to the Queen in Council. The decision in *Parkin* v. *James*[1] amounts to a decision that this clause forbids the Parliament to deprive the High Court of the right to hear any appeal whatever from the State Supreme Courts, since at the establishment of the Commonwealth an appeal lay from them either as of right or by special leave in every case. This is the scheme adopted by the Judiciary Act, 1903, which provides for appeals as of right in certain cases and by special leave in all others. But again on the theory enunciated by the High Court in the case of *Baxter* v. *Commissioners of Taxation, New South Wales*,[2] the restriction on the right of Parliament to limit appeals would not apply to the exercise of the federal jurisdiction which is vested in the State Supreme Courts by the Judiciary Act, 1903, and this conclusion is suggested also by the reasoning of the Court in *Hannah* v. *Dalgarno*.[3] The point is, however, purely academic, for the Parliament is not at all likely to limit the power of the Court to hear appeals. The proviso has, however, one definite effect: the Parliament cannot increase the amount which gives the person aggrieved by a decision of a State Court the right of appeal to the High Court.[4]

The respective relations of the High Court and the Supreme Courts in cases of appeal from the Supreme Courts to the High Court in the exercise of the ordinary jurisdiction of the Supreme Courts were raised in the case of *Bayne* v. *Blake*.[5] An action was brought by Bayne in the Supreme Court of Victoria, judgment being given for the defendants. An appeal to the High Court was allowed, and the High Court ordered that the judgment appealed from should be discharged, and that in lieu thereof a declaration and judgment should be substituted providing for the recovery by the plaintiffs of certain sums, which were to be later ascertained by inquiry. The High Court further ordered "that this cause be remitted

[1] [1905] 2 C.L.R. 315.
[2] 4 C.L.R. 1087, at pp. 1136 *seq.* per Griffith C.J.
[3] 1 C.L.R. 1, at pp. 9, 10.
[4] 1 C.L.R. 1, at p. 9.
[5] [1908] 5 C.L.R. 467

to the Supreme Court to do therein what is right in pursuance of this judgment."

On November 2, 1906, the Privy Council granted leave to appeal from the judgment of the High Court, but refused an application for a stay of execution. On November 13, 1906, in the Supreme Court of Victoria Hodges J. made an order adjourning the case until the determination of the appeal before the Privy Council, or until a further order. On December 14, 1906, on the application of the defendants, Griffith C.J., of the High Court, ordered a stay of proceedings, but on March 27, 1907, he reconsidered the order, and removed the stay of proceedings so far as was necessary to enable the Supreme Court to proceed with certain enquiries directed by the judgment of the High Court.

On September 27, on the application of the plaintiffs, Griffith C.J. made an order that the stay should be entirely removed. On October 24 the plaintiffs applied to Madden C.J., of the Supreme Court of Victoria, to proceed with the inquiries direct by the High Court, but an order was made that the matter should be deferred until the result of the decision of the Privy Council had been made known. Special leave was granted by the High Court to appeal from this judgment. It was argued in support of the action of the Supreme Court of Victoria that s. 51 (xxxix) of the Constitution, which authorises Parliament to make laws as to matters incidental to the execution of any power vested in the federal judicature, did not authorise the Parliament to regulate the Supreme Court. On the merits of the case there was no ground for proceeding with the inquiry pending the decision of the Privy Council.

The Court decided against the contention on behalf of the action of the Supreme Court. They criticised the dictum of the Chief Justice of the Supreme Court, who had stated that he was not the servant of the High Court, and that the High Court could not direct the Chief Clerk of the Supreme Court to proceed with the inquiries. Although the Chief Justice was not the servant of the High Court he was a citizen of the Commonwealth, and he was bound by the laws of the Commonwealth under s. 5 of the Commonwealth of Australia Constitution Act. He was further bound by the Judiciary Act, 1903, just as was any private person, and s. 37 of that Act expressly provided that it should be the duty of the Court to which a cause was remitted to execute the judgment of the High Court in the same manner as if it were its own judgment. The Chief Justice, although he was not a servant of the Court, was an officer of the law required by law to execute the orders of the Court. It was manifest that the order he made was wrong. It had been laid down before he made the order in the case of *Peacock* v. *D. M. Osborne & Co.*[1] that the stay of proceedings could not be granted by a Supreme Court. If it was the duty of the Supreme Court to direct its Chief Clerk to make inquiries the High Court was entitled to make

[1] [1907] 4 C.L.R. 1564.

that order. In the United States it was the practice for the Supreme Court to make a direct order on a State officer to obey its judgment. They therefore discharged the order made by the Chief Justice of the Supreme Court, but in view of the circumstances of the case—viz. that the Privy Council was about to deliver its own judgment on appeal reversing the decision of the Court of the Commonwealth—they did not adopt the procedure of directing an inquiry by the Chief Clerk of the Supreme Court.

The Sovereignty of the States.—The question of the position of the States has formed the subject of much discussion between the Imperial, the Commonwealth, and the States Governments, partly in connection with the question of the responsibility of the Commonwealth for external affairs,[1] and partly in connection with the exclusion of representatives of the States from the Imperial Conference of 1907.[2]

With regard to representations by foreign Powers, it has been held by the Imperial Government that they must look to the Commonwealth in all such questions, and that the Commonwealth represents Australia in these cases. This position has never yet been accepted by the States. Similarly the Governments of the States remain of opinion that they should be represented at the Imperial Conference. It is clear that the position is one of considerable difficulty and that some of the contentions of the States cannot be justified. The Commonwealth is certainly not, as has been asserted by one somewhat too enthusiastic supporter of States' rights, the agent of the States for certain limited functions;[3] nor can the claim of the States that they should be consulted on all matters in which the Commonwealth has not exclusive powers be reasonably sustained.[4] On the other hand, it remains an open question as to whether the States have not reason to hold that they should be consulted on all matters which remain within their exclusive jurisdiction under the Constitution of the Commonwealth, so long as these matters are left to their jurisdiction. It is unquestionably the case that such subjects as settlement of immigrants, the taxation of colonial bonds, judicial appeals to the Privy Council, the reciprocal admission of barristers, the reciprocal admission of land surveyors and so forth, deal with matters which are substantially within the orbit of the exclusive powers of the States. As a matter of fact, a substantial recognition has been given in the case of questions regarding surveyors by the fact that a subsidiary Conference is proposed to be held in 1911, at which the States will be represented as well as the Commonwealth.

The position claimed by the States is certainly supported by the decisions of the High Court of the Commonwealth, which has from the very first

[1] See Parliamentary Papers, Cd. 1587, and Victoria Parliamentary Papers, 1907, No. 23, pp. 37-47.

[2] See Parliamentary Papers, Cd. 3340, 3524, and 3523, pp. 92-94.

[3] Cd. 3340, p. 24.

[4] See Harrison Moore, *Commonwealth of Australia*, 2nd ed. pp. 350 *seq.*

asserted in unmistakable terms the position of the States as being sovereign Powers just as the Commonwealth is a sovereign Power. It was pointed out by the Court in *D'Emden* v. *Pedder*[1] that in considering the relations of Commonwealth and States legislation it must be remembered that both the Commonwealth and States were sovereign States subject only to the restrictions of the Imperial control and to the actual provision of their Constitutions. It follows clearly from this declaration, which has been consistently adopted ever since, that in the opinion of the High Court the Commonwealth must be regarded as a sum of seven separate sovereignties, and not as one sovereignty with six subordinate agencies. The States have in no sense merged their existence in the existence of the Commonwealth, and Prof. Harrison Moore[2] seems to be in accordance with the spirit of the decisions of the High Court when he lays it down that the States still retain the right to be consulted in all treaty matters concerning affairs in which they have sole legislative authority.

The same conception of the independence of the State and its sovereignty is seen in the decision in the case of *McKelvey* v. *Meagher*.[3] McKelvey was arrested in Victoria and committed to prison for the purpose of being removed to Natal as a fugitive offender in respect of a crime against the law of that Colony. It was urged that the committal was invalid because the police magistrate of Victoria was not a magistrate of a British possession within the meaning of the Imperial Fugitive Offenders Act, 1881. It was said that the Imperial Act conferred the powers of legislation as to fugitive offenders upon a central legislature only, that the central legislature of the Commonwealth was the Commonwealth Parliament, and that that Parliament had not legislated on the subject so as to give the police magistrate of Victoria any jurisdiction. The Court, however, declined to accept that view. Griffith C.J., without deciding whether or not the Commonwealth Parliament had power to legislate as to the rendition of fugitive offenders under the power to legislate regarding external affairs, pointed out that the States still retained under s. 108 of the Constitution the existing law, and that therefore the police magistrate was a competent authority to order the committal of the prisoner. With this view Barton J. agreed, and O'Connor J. went further, for he[4] expressed the clear view that the Commonwealth Parliament had no power to deal with the subject of the rendition of fugitive offenders, as it was a power which presupposed a uniform condition of criminal law which the Commonwealth Parliament had no authority to effect. All the judges were careful to point out that the term central legislature probably contemplated the case of a central legislature such as that of Canada, the only important federation existing at the time of the passing

[1] [1904] 1 C.L.R. 91, at p. 109.
[2] *Commonwealth of Australia*, 2nd ed. p. 356.
[3] [1906] 4 C.L.R. 265.
[4] 4 C.L.R. 265, at p. 295. Cf. also p. 293 for case of Union of South Africa.

of the Act, which had full power to regulate criminal law, and contrasted with it the case of Australia.

The same view of the position of the States as autonomous communities side by side with the Commonwealth is shown by the judgment of Griffith C.J. in *Baxter* v. *Commissioners of Taxation, New South Wales*,[1] in reviewing the decision of the Privy Council in *Webb* v. *Outtrim*.[2] "The King," he says, "is the common head of the United Kingdom and of all the self-governing dominions, and the legislature of each of these dominions has, subject to its own constitution, full autonomy. It seems strange that in this year 1907, when the world is resounding with praises of the system of the British Empire,[3] which allows its different members to enjoy this freedom and independence, we should be asked to decide solemnly that the idea is an entire delusion. It is now, we suppose, well recognised that, except so far as regards relations with foreign Powers which are not now in question, the King, as head of each of these separate autonomous States, is so far a juristic person that differences and conflicts may arise between these States, just as between other autonomous States which do not owe allegiance to a common sovereign. It is too late to set up a contrary theory unless it is intended to make a revolutionary change in the concept of the Empire." The analogy between the States of the United States and the States of the Commonwealth was in his opinion a perfect one.

The same conception of the States and the Commonwealth as separate juristic entities appears in many other cases. "It is manifest," said Griffith C.J. in the case of *The Municipal Council of Sydney* v. *The Commonwealth*,[4] "from the whole scope of the Constitution that just as the Commonwealth and State are regarded as distinct and separate sovereign bodies, with sovereign powers limited only by the ambit of their authority under the Constitution, so the Crown, as representing those several bodies, is to be regarded not as one, but as several juristic persons, to use a phrase which well expresses the idea. No better illustration can be given than is afforded by the lands now sought to be rated, which having originally been property of the State, *i.e.* lands of the Crown in New South Wales, have become vested in the Commonwealth, *i.e.* vested in the Crown in the right of the Commonwealth. The change in constitutional ownership is accurately and unmistakably denoted by the language of s. 85 in which it is expressed."

There is, of course, one obvious objection to the use of the term sovereignty in these cases. Sovereignty is, properly speaking, a term of international law, and in that sense of the word no State of Australia, and not even the Commonwealth itself, can be said to be sovereign. The Commonwealth

[1] [1907] 4 C.L.R. 1087, at p. 1126. [2] [1907] A.C. 81.

[3] A reference, of course, to the grant of new constitutions to the Transvaal and the Orange River Colony.

[4] [1904] 1 C.L.R. 208, at p. 231.

is a dependency, or at any rate a portion of an empire in which the ultimate legislative control rests with the Imperial Parliament, while to foreign nations it is represented by the executive government of the United Kingdom, which is in fact dependent on the pleasure of that Parliament. But, on the other hand, the use of the term has the advantage of affirming, what is clearly the case, that within the ambit of authority given to them by their constitutions, the Commonwealth and the State Parliaments are no mere delegates of the Imperial Parliament, but are *pro tanto* clothed with the power of that Parliament itself. On the other hand, there is real danger in ignoring the important fact of the Imperial connection in considering the legal interpretation of the Constitution of the Commonwealth. It is clear that at times at least the High Court has shut its eyes to the facts,[1] and has pictured to itself the Empire as a congeries of self-governing, autonomous communities with a common head, much as were Norway and Sweden before the breach of the Union. But though in large measure in practice this is true, it is essential to remember that what the Imperial Parliament has given it can legally take away, that its laws are still paramoumt when they come into conflict with colonial laws, and the Imperial Government, though it exercises no direct executive authority in the colonies, possesses the power of disallowance of colonial laws. In all these respects the Commonwealth differs greatly from the United States of America, and it is perfectly clear that this point is obscured by the assertion of the political sovereignty of the States, as though they and the Commonwealth were integral fractions of a sovereignty consisting of a sum of parts.

The Position of the State Governor.—If the States remain sovereign within their sphere of influence, so too the Governor of the State cannot be regarded as an officer of the Commonwealth. The question was decided in connection with a difficulty which arose at the beginning of 1907 in respect of an election to fill the places of the three Senators of South Australia who were retiring at the end of 1906. It was held by the High Court acting as a Court of Disputed Returns that the election was void in respect of Mr. Vardon, one of the candidates, and thereupon the Governor of the State of South Australia, acting on the advice of his Ministers, forwarded a message to the two Houses of Parliament asking them to meet together and select a person as Senator, his advisers taking the view that the failure of the election created a casual vacancy in the State which fell, under the Constitution, to be filled by election by the two Houses sitting together. The two Houses on July 11, 1907, accordingly chose Mr. O'Loughlin to be a Senator. Thereupon a rule *nisi* was granted by the High Court for a mandamus to the Governor directing him to cause a writ to be issued for a new election by the ordinary electorate, the ground being that the Governor had been wrongly advised in thinking that the vacancy which had occurred was a

[1] Cf. Griffith C.J., at 1 C.L.R. 585, at p. 597 : "For all practical purposes Great Britain is an entirely different State from Australia."

casual vacancy which should be filled by the two Houses of Parliament, whereas it was really a case for a fresh election.

It was argued before the Court[1] that the Governor of a State was a public officer of the Commonwealth for the purpose of issuing the writ in question, and that a mandamus to make him perform an obvious duty was the proper mode of procedure. But the Court unanimously rejected that plea. It had never been suggested that a State Governor was subject to a mandamus if he failed in his duty to issue writs to summon the House of Assembly upon a dissolution. The case of the election of a Senator was not quite analogous: it was conceivable that the executive government of a State might desire that the filling up of a vacancy should be postponed, and with that end in view might refuse to afford the Governor the necessary administrative facilities. In such a case the Governor might fail in his duty, but it would be a duty which he owed to the State collectively. "It is not easy to see how, in such a case, he could perform his duty without dismissing his Ministers and finding others, and that power is manifestly one the exercise of which could not be reviewed by any authority but the Sovereign. The duty, therefore, is one of the duties which the constitutional head of a State owes to a State (and in the case of a Governor, but in a slightly different sense, to the Sovereign), and its performance must be enforced in the manner appropriate to the case of such duties. Instances of such duties—duties of imperfect obligation—are familiar to students of constitutional law. The Governor, therefore, could not be regarded *quoad hoc* as an officer of the Commonwealth. The States are not subordinate to the Commonwealth, and the Commonwealth judiciary cannot command the Constitutional head of a state to do in that capacity an act which is primarily a State function."

Similarly, in the case of *Horwitz* v. *O'Connor*[2] the High Court was asked to intervene in the case of a prisoner in a Victorian gaol who claimed that he was entitled to be released under rules made under s. 540 of the Crimes Act, 1890, of Victoria, which empowers the Governor in Council to make rules for the mitigation or remission of sentences as a reward of good behaviour. The High Court declined to do so on the ground that the only relief which could be asked for was a mandamus to the Governor in Council to consider the matter. But a mandamus to the Governor in Council could not lie, and no Court had jurisdiction to review the discretion of the Governor in Council in the exercise of the prerogative of mercy.

The Commonwealth as Agent of the States.—As we have seen, the claim that the Commonwealth should be regarded as merely an agent of the States was put forward in a somewhat naïve form by a State Premier

[1] *The King* v. *The Governor of South Australia*, [1907] 4 C.L.R. 1497. That the Governor was wrongly advised was shown by the High Court's decision in *Vardon* v. *O'Loughlin*, [1907] 5 C.L.R. 201. Cf. Harrison Moore, *Commonwealth of Australia*, 2nd ed. p. 114, n. 1.

[2] [1908] 6 C.L.R. 38.

in the correspondence with the Imperial Government as to the representation of Australia at the Imperial Conference. The question has received judicial consideration in the case of the *State of New South Wales* v. *the Commonwealth*.[1] That case arose from the action of the Commonwealth Parliament in 1908 in passing the Coast Defence Appropriation Act, by which a sum of £250,000 was appropriated out of the Consolidated Revenue Fund for the purpose of a harbour and coastal defence (naval) account, which was opened as a trust account under the provisions of s. 62 (*a*) of the Commonwealth Audit Acts, 1901-6, by the Treasurer of the Commonwealth. Similarly, under the Old Age Pensions Appropriation Act, 1908, a sum of £750,000 was appropriated out of the Consolidated Revenue Fund for the purposes of a similar trust account known as the Invalids and Old Age Pensions Fund. That Act was passed in June 1908, and came into force on the 10th of that month, and in the same month the Surplus Revenue Act, 1908, was passed, and came into force on June 13. The Treasurer then paid to the credit of the Harbour Account the sum of £250,000, and to the credit of the Invalids and Old Age Pensions Fund the sum of £182,000, and debited these sums against the States on the ground that they formed portions of the expenditure of the Commonwealth.

The State of New South Wales claimed from the Commonwealth the sum of £160,000, being the proportion of that amount debited to New South Wales. It was argued for the Commonwealth that under s. 94 of the Constitution all surplus revenue was to be paid month by month to the States. It was said that it was not open to the Commonwealth to put aside in trust accounts funds which they did not actually expend. Under s. 89 balances were to be struck monthly, and the surplus paid over to the States. The mere appropriation of moneys could not be said to be expenditure. It was not a usual and ordinary thing for a Government to set aside revenue and call such a procedure expenditure. The relation of the States and the Commonwealth in respect of surplus revenue bore a close analogy to that of principal and agent, and the duty of the Commonwealth under ss. 89 and 93 of paying over to the States was the same as that of an agent who was directed to pay to his principal the balance of his receipts over the expenditure.

The High Court rejected the arguments urged for the State of New South Wales. They held that in the case of a transaction between principal and agent, if the agent were required to pay over to his principal all moneys collected for him after deducting disbursements made on the principal's behalf, the agent could only bring into account actual disbursements made by him. But it was different with the case of the relations between the Federal Government and the Governments of the States. They were by no means the same as those of principal and agent.[2] It was

[1] [1908] 7 C.L.R. 179. See also Queensland *Parliamentary Debates*, 1910, pp. 1463 *seq.*

[2] 7 C.L.R. 179, at p. 188, *per* Griffith C.J.

impossible to hold that the balances were to be finally struck on the last day of each month; the result would be intolerable confusion, as the Commonwealth might pay over one month large sums, while the next month their receipts would be exceeded by their expenditure. If a sum of money were lawfully appropriated out of the consolidated revenue for a specific purpose that sum could not be regarded as part of the surplus until the expenditure of it was no longer lawful or no longer necessary. Barton J.[1] held that the word "expenditure" would cover sums appropriated even though they were not actually expended. The Constitution did not render the Commonwealth the mere agent of the States to handle certain of *their* revenues and to have a dole for its work. The money appropriated from the Consolidated Revenue Fund was lawful expenditure, and judgment must be for the Commonwealth. O'Connor J.[2] also distinguished between a mere mercantile transaction and the adjustment of the rights under the Constitution of the States and the Commonwealth respectively. The Commonwealth was entitled in accordance with well-recognised methods of finance to accumulate revenue to be paid out later in the execution of some Commonwealth power. Isaacs J.[3] was of opinion that it was a hopeless contention to claim that money which stood appropriated for a definite purpose and was not available for any other Commonwealth purpose was yet money which not only might but must be diverted from the Commonwealth and paid over irrevocably to the States. Higgins J.[4] also held that expenditure covered money which had been appropriated for a definite purpose, but he was also prepared to hold that Parliament had the power of allowing contemplated expenditure to be debited, and had exercised that power even if ss. 89, 93, and 94 of the Constitution should mean that the States could only be debited with moneys actually paid.

The General Powers of the Parliament.—In all matters in which the question of the division of federal powers is not involved, the High Court has naturally tended to give to the powers conferred upon the Commonwealth a full and ample interpretation. Nevertheless, in the case of *Baxter* v. *Ah Way*,[5] decided in May 1909, the old objection that *delegatus non delegare potest* was raised, though admittedly in a new form, and with a formal disclaimer of any desire to assert the validity of that maxim as applying to the powers of legislatures like the Commonwealth Parliament. Under s. 52, sub-s. (*g*) of the Customs Act, 1901, the Governor-General in Council was empowered to prohibit the importation of goods, and in virtue of that power he prohibited by a proclamation of December 29, 1905, the importation of opium in a condition suitable for smoking. The defendant was originally charged before a Court of summary jurisdiction with a breach of the proclamation, and the case came on the election of the prosecutor

[1] 7 C.L.R. 179, at pp. 191 *seq.*
[2] 7 C.L.R. 179, at pp. 197 *seq.*
[3] 7 C.L.R. 179, at pp. 199 *seq.*
[4] 7 C.L.R. 179, at pp. 203 *seq.*
[5] [1909] 8 C.L.R. 626.

before the High Court, on a question of law submitted by Higgins J., before whom the case was being heard. The defendant claimed that the proclamation was *ultra vires*, as the sub-s. (*g*) of s. 52 of the Act was not within the power of the Commonwealth Parliament to enact. It was a delegation of the legislative power which was vested in Parliament by the Constitution and could not be delegated: that had been held in the American case of *Field* v. *Clark*.[1] It was true that the State and provincial Parliaments had authorised similar procedure, but then the States could, like the provinces of Canada, alter their constitutions, and had in effect done so by such legislation. The Court unanimously declined to accept this view of the powers of the Commonwealth: they laid stress on the declarations of the Privy Council in *Reg.* v. *Burah*,[2] *Hodge* v. *The Queen*,[3] and *Powell* v. *Apollo Candle Co.*,[4] which established the right of conditional legislation such as that actually exercised in this case, and it was pointed out by Isaacs J. that the State enactments were not alterations of the constitutions at all: though the States had power to alter their constitutions, that had to be done in accordance with the constitution itself as laid down in *Cooper* v. *Commissioner of Income Tax*,[5] and could not be done by any ordinary law. The States had had power in customs matters to legislate as the Commonwealth had now done: it was clear that they had lost the power with the transfer of customs legislation to the sole control of the Commonwealth, and the Commonwealth must have the same power as they had exercised.

Similarly the High Court rejected, in the case of *Robtelmes* v. *Brenan*,[6] the attempt to restrict the right of the Commonwealth Parliament to arrange for the deportation from Queensland of the Kanaka labourers whose removal from the Commonwealth had been finally decided upon. Under s. 8 of the Federal Pacific Labourers Act, 1901, a Court of summary jurisdiction, upon being satisfied that a Pacific Island labourer found in the Commonwealth before December 31, 1906, and reasonably supposed not to be employed under agreement, is not or has not been so employed for a month past, may order his deportation from Australia. Robtelmes was brought before a police magistrate, who declared himself so satisfied and ordered his deportation. He appealed from this order to the High Court. It was argued for him that the deportation of an alien friend was not authorised by any decision of the Privy Council, and that the case of *Attorney-General for Canada* v. *Cain*[7] merely authorised the expulsion of an unauthorised immigrant. But this view was rejected by the Court. They admitted that the legislature of the Commonwealth could not make any laws which would have effect as laws beyond its own territorial limits,[8] that is to say three

[1] 143 U.S. 649. [2] 3 App. Cas. 889. [3] 9 App. Cas. 117.
[4] 10 App. Cas. 282. [5] [1907] 4 C.L.R. 1304. [6] [1906] 4 C.L.R. 395.
[7] [1906] A.C. 542.
[8] Cf. *Hughes* v. *Munro*, [1909], 9 C.L.R. 289, at p. 294, *per* Griffith C.J.

marine miles from the coast, except so far as its laws were in force on board ships trading between different ports of the Commonwealth.[1] But the same remark applied to the case of the Canadian labourers, in which the Privy Council had held that the deportation of the labourers from Canada was legal even though it involved the exercise of constraint beyond territorial limits. The legislation was therefore fully justified by the power to make laws as to immigration and aliens which the Commonwealth was given under the Constitution.

The Court evidently felt some difficulty in the position of the alien on deportation. They held, in accordance with the spirit though not the actual wording of the decision in the Canadian case, that the right of deportation covered the choice of destination, and was not confined to deportation to the home of the alien. But how was his detention in a ship on the high seas to be justified, when admittedly Commonwealth Acts did not operate on the high seas? The Chief Justice suggested that it may reasonably be assumed that every alien who chooses to come into a sea-girt country knows that he is liable to be deported, and that he can only be deported by sea, and that he therefore agrees as a term of his admission to the sea-girt country that such restraint may be exercised upon him beyond the territorial limits of that State as may be necessary for the purpose of his deportation. Regarded from this point of view the necessary restraint is made with his consent. This is an ingenious device for evading the difficulty that there is no legal authority for the detention on the high seas of a person who is thus being deported. It is probable, however, that the Courts, since the decision of the Privy Council in the case of the *Attorney-General for Canada* v. *Cain*,[2] will find that in such cases, as the beginning of the detention on board ship was clearly legal, the detention for the rest of the voyage will be legal also; but there remain serious difficulties if the detention is unnecessarily prolonged. For example, supposing it were proposed to deport a man from Australia to France, and he was taken thither via England. Would it be possible to justify his detention on board ship in an English harbour for the purpose of taking him to France?

It may be noted in the course of the argument of *McKelvey* v. *Meagher*[3] the Chief Justice remarked that for the conveying of a fugitive offender back to the country from which he was a fugitive Imperial legislation would be necessary; in that case of course it is supplied by the Imperial Fugitive Offenders Acts, and so no difficulty would arise. In a later case—that of *Hughes* v. *Munro*[4]—the Chief Justice also laid it down that a statute must not be interpreted without grave cause to operate beyond territorial limits,

[1] See [1908] 5 C.L.R. 737.

[2] [1906] A.C. 542.

[3] [1906] 4 C.L.R. 265, at p. 274.

[4] [1909] 9 C.L.R. 289, at p. 294. This was one of the taxing cases, and the decision is of value as contrasting the powers of the States with those of the Canadian provinces under s. 92 of the British North America Act, 1867, on which cf. the cases cited in *Lovitt* v. *Rex*, 43 Can. S.C.R. 106.

though he left it open as to whether the limitation were an absolute one. As a matter of fact, it is clear from the powers given by the Commonwealth Constitution that the general restriction of the legislative authority of Parliament to the limits of the Commonwealth is qualified by certain exceptions; for example, s. 51 (x) empowers legislation for fisheries in Australian waters beyond territorial limits; s. 51 (xxx) empowers the Commonwealth to legislate as to the relations of the Commonwealth with the Islands of the Pacific; while s. 51 (vi) authorises legislation for the naval and military defence of the Commonwealth, and in the case of naval defence extra-territorial authority is essential if the law is to be effective, and both the Canadian and the Commonwealth Naval Defence Acts of 1910 assume power to legislate for the fleets beyond territorial limits. No doubt when that question comes to be discussed full effect will be given by the High Court to the principle laid down by the Privy Council in the case of Cain; and in this connection it may be mentioned that the Chief Justice of New Zealand has, despite criticism of English writers, reiterated his belief in the doctrine that a ship registered in New Zealand carries with it wherever it goes the law of New Zealand.[1] With this doctrine may be compared the principle enunciated by the High Court in the case of *The Merchant Service Guild of Australasia* v. *Archibald Currie & Co. Proprietary, Ltd.*,[2] which establishes that the interpretation of s. 5 of the Commonwealth of Australia Constitution Act is that the laws of the Commonwealth on the subjects on which it has power to legislate are in force on a British ship whose first port of clearance and destination are in the Commonwealth. A vessel registered in the Commonwealth might not comply with the conditions laid down in s. 5 of the Act, but the intention of the judgments in both the New Zealand and Commonwealth cases is clearly in favour of establishing the law of New Zealand and the Commonwealth as in force on ships which in common parlance might be called New Zealand or Australian vessels.

It is rather curious that the High Court should not have criticised the doctrine enunciated by the Privy Council in the Canadian case[3] that the power of excluding aliens was a sovereign right which the Imperial Government could "delegate" to the Governor or the Government of one of the Colonies, either by a Royal Proclamation which has the force of a statute (*Campell* v. *Hall*[4]), or by a statute of the Imperial Parliament, or by the statute of a local Parliament to which the Crown has assented. "If this delegation has taken place, the depositary or depositaries of the executive and legislative powers and authority of the Crown can exercise those powers and that authority to the extent delegated as effectively as the Crown itself

[1] *Huddart Parker Proprietary (Limited)* v. *Nixon*, 29 N.Z.L.R. 657, at p. 663. See *In re the Award of the Wellington Cooks' and Stewards' Union*, 26 N.Z.L.R. 394, and cf. *Journ. Soc. Comp. Leg.*, No. 20, 1909, pp. 208 *seq.*; Harrison Moore, *Commonwealth of Australia*, 2nd ed. pp. 266-9.

[2] [1908] 5 C.L.R. 737. [3] 22 T.L.R. 757, at p. 758. [4] Cowp. 204.

could have exercised them." It is really impossible to accept this language as either accurate or consistent with the language of the Privy Council in the cases of *Reg.* v. *Burah* and the other cases above cited. The legislative powers of a colonial legislature are not delegated powers, however they are conferred. They are powers to legislate without restraint within the sphere of influence assigned by the instrument conferring the powers: the true statement of the case would rather seem to be that the right of excluding aliens is one which every nation possesses at international law, and the right of a colonial Parliament to exclude them is an exercise of the sovereign right of the country exercised by one of the modes of expression of the sovereign power. On this view the Imperial Parliament is no less an expression of the sovereign power than the colonial Parliament: neither can be said to have a delegated power, and to speak as the Privy Council seem to speak of the delegation of authority by assenting to an Act is a curious and almost unintelligible phrase. It is not perhaps without interest that The Hague Tribunal in the case of the North American fisheries dispute have clearly shown their recognition of the right of the three Parliaments of the United Kingdom, Canada, and Newfoundland to express the sovereign power of the Empire to make regulations regarding the fishery on the coast—a significant rejoinder to the attempts once pressed by the Government of the United States that the Imperial Parliament and Government alone could make regulations affecting the treaty rights of the United States in North America. But in all probability the decision of the Privy Council was not on this point of wording very carefully considered.

Incidentally, in the case of Robtelmes, the Chief Justice expressed doubt whether the executive of the Commonwealth or of any State could deport any person except under statutory authority, though the point was not necessary for the decision of the case. The same view was expressed by the Court in the case of *Brown* v. *Lizars*,[1] where it was decided that except under the authority of the Extradition Acts, and in accordance with the procedure therein laid down, the arrest of an alleged fugitive offender could not be permitted or justified.

While, however, the High Court has not hesitated to assert the wide powers of the Commonwealth Parliament within its sphere of action, and the freedom of the Parliament to choose such means as seem good to them, there are two vital limits set to the competence of the Commonwealth, one by the fact of the rights of the States to preserve their own powers, and one by the fact that the Commonwealth's powers are definitely restricted to certain named subjects and legislation incidental thereto. Even where no question of interference with the powers reserved to the States is involved, the High Court insists that the powers of the Parliament must not exceed the limits connoted by the ordinary sense of the words conferring on it legislative authority.

[1] 2 C.L.R. 836.

This point of view was brought out very clearly in the case of *Attorney-General for the Commonwealth* v. *Ah Sheung*,[1] decided in 1906, on appeal from the Supreme Court of Victoria. Ah Sheung was a Chinaman who had been naturalised in Victoria in 1883, and had acquired a domicile there. In 1901 he left the Commonwealth and proceeded to China, and on returning five years later he was refused admission under the terms of the Immigration Restriction Acts. His case came before a judge of the Victorian Supreme Court, who decided that he did not fall under the terms of the Acts, and on appeal the High Court upheld this view. They declined to accept the doctrine of a separate Australian nationality, so that while the term "immigration" would apply to other persons of British nationality it would not apply to persons of Australian nationality, whatever that might mean. But they thought that there was great force in the view that immigration was not a correct term to apply to the case of an Australian who was merely absent from Australia for a temporary purpose, though they were not then prepared to say whether residence or domicile would be the test of being an Australian.

The meaning of the term "immigration" was also considered in the case of *Chia Gee* v. *Martin*,[2] in which the High Court held that the term "immigrant" did not necessarily mean one who arrived in the Commonwealth with the intention of becoming a permanent resident, and that the particular provision of the Immigration Restriction Act under consideration dealt with entry into the Commonwealth.

In the later case of *Ah Yin* v. *Christie*[3] the Court held that the power did not depend on the nationality of the person effected by its exercise, nor was it excluded by the fact that for purposes of civil status he was domiciled in Australia or in any part of it, and that therefore the child of a Chinaman, domiciled in Australia, who though not born in Australia was technically domiciled in the Commonwealth, might be a prohibited immigrant under the Commonwealth law. Griffith C.J. observed that the Commonwealth had, under the Constitution, power to exclude any person whether an alien or not, and he expressed the opinion that any person who sought to enter the Commonwealth from abroad was *prima facie* an immigrant within the meaning of the Immigration Restriction Act, but in that case also the Court refrained from deciding any of the points which were left unsettled in the previous cases.

The position of the High Court was further defined in 1908 in the case of *Potter* v. *Minahan*,[4] which came before the Court on appeal from a Court of petty sessions of Victoria exercising federal jurisdiction. The magistrate found as facts that the defendant was born in Victoria, that his mother was an Australian, that his father was a Chinese, that he was brought up by his father and mother, and lived with them in Victoria until he was about

[1] [1906] 4 C.L.R. 949.
[2] [1905] 3 C.L.R. 649.
[3] [1907] 4 C.L.R. 1428.
[4] [1908] 7 C.L.R. 277.

five years old, that he was taken then to China by his father, who intended that he should return to Australia. He came to Australia, but was required to pass the dictation test. He said that he could not write what the officer read to him. The passage was not read again, and the officer told the defendant that he was a prohibited immigrant. An order *nisi* to review the decision of the magistrate was obtained by the informant Potter, a constable of police. It was urged for the appellant that the father of the defendant had never been domiciled in Victoria, and that in any case the defendant was an immigrant, and the fact that he had his domicile in Australia did not render him any less an immigrant, nor had his nationality anything to do with the question. For the defendant it was urged that the Acts were not intended to apply to Australian-born British subjects; it was most improbable that a community should pass an Act excluding members of that community unless on the most distinct terms. It had been decided in the United States that a citizen would not be excluded except in express terms. It was not necessary to claim that a man had a right to return to the country to which he owed allegiance, but Parliament would not be disposed to deny that right to a man except by express words or by necessary implication. The idea of immigration was quite foreign to a man coming back to his own country, and in the Acts of the Australian colonies before federation there was no provision purporting to exclude native-born Australians. It was also objected that the dictation test had not properly been applied. The majority of the Court decided that he was not an immigrant within the meaning of the Immigration Acts. Griffith C.J. held that the case could not be determined by the mere application of the rules either of nationality or of domicile. No doubt a British subject coming to the Commonwealth from another part of the Dominions might be an immigrant within the meaning of the Constitution. But anterior to the concepts of nationality and domicile was another which was an elementary part of the concept of human society, viz. the division of human beings into communities. Every human being was a member of some community, and was entitled in the part of the empire occupied by that community to a place to which he might resort when he thought fit. It had been held in the case of *Musgrove* v. *Chun Teeong Toy*[1] that an alien had no legal right to enter a country of which he was not a national, yet unless he was outlawed from human society he must be entitled to enter some community. At birth, in general, he was entitled to remain in the place where he was born; if his parents were then domiciled in some other place he perhaps acquired a right to go to and remain there. But until the right to remain there or return to his place of birth was lost it must continue, and he was entitled to regard himself as a member of the community who occupied that place. It was not necessary to consider whether he could lose his home by change of residence, and if so whether he could re-acquire it, or

[1] [1891] A.C. 272.

whether the right of entry extended to all the Dominions of the State of which he was a national. The return of such a person to his native land after temporary absence had never been described in the English language as immigration.

The respondent was entitled by the circumstances of his birth to regard Victoria as his home, and his return to the Commonwealth was not immigration within the meaning of s. 51 (xxvii) of the Constitution. He added that the first pattern of the Immigration Restriction Act of the Commonwealth was a Natal Act of 1887 (? 1897), and it would have been a singular thing if under that Act a Zulu who had gone to Johannesburg to work in the mines should have been regarded on his return to Natal as an immigrant.

Barton J.[1] held that the respondent's domicile of origin was that of his mother in Victoria, and that he had never changed his domicile since he had power to do so. His entry into the Commonwealth was a return home, and no one described a man returning home to his own country as an immigrant. The same view as to the right of a man to return to his home if he had not abandoned his intention of doing so after leaving Australia was asserted by O'Connor J.[2] He declined to accept the view that every person entering Australia was an immigrant. To do so would lead to the consequence that an Australian-born, whose actual permanent residence was in Australia, might be made subject to the dictation test on his return home after a month in New Zealand. He admitted that one part of the British Empire could exclude British subjects born in another part, and there was no Australian nationality in question between the British Empire and other nations. A person born in Australia, however, could only be excluded from Australia by an enactment in express terms or by necessary implication.

Isaacs J.[3] held that neither British nationality nor an ideal Australian domicile could prevent a man from being an immigrant if it were distinctly proved that he had discontinued his practical identification with the inhabitants of the Commonwealth. The question was whether, notwithstanding any personal absence from Australia, a man could justly claim to regard the country as a place of habitation which he had never abandoned. It was not sufficient that a man should have been born in Australia, nor that he could claim an Australian domicile upon a theoretical reversion of his domicile of origin. In the case in question he thought that there was no proof that Minahan was really identified with Australia. All the probabilities showed, he thought, that he was destined by his father for life in China, and only gave it up when failing to be successful there. On the other hand, he held that the dictation test had not been properly applied.

Higgins J.[4] also agreed that the dictation test had not been properly

[1] 7 C.L.R. 277, at pp. 291 *seq.*
[2] 7 C.L.R. 277, at pp. 299 *seq.*
[3] 7 C.L.R. 277, at pp. 307 *seq.*
[4] 7 C.L.R. 277, at pp. 317 *seq.*

applied, but he was also clear that there was no such thing as an Australian citizenship, and that the only thing was whether on the facts the man was an immigrant or not. He held that on the facts he was an immigrant.

In the case of the immigration power there is really no conflict with State legislation, though the decision of the High Court may render it necessary for the States to pass additional legislation regarding immigration, as Tasmania indeed has already done with a view of checking the immigration of criminals who would not fall under the scope of the Commonwealth legislation authorised by the Commonwealth. But in addition to the ordinary scrutiny of the validity of pretended exercises of the Commonwealth power, such as has been exhibited in the case of immigration, the High Court has felt bound to apply a still more jealous scrutiny in the case of Acts of the Commonwealth which, though they might fall under the mere language of the grant of power to the Commonwealth, would nevertheless be repugnant to the spirit of that enactment. The more obvious way of interpreting the Act which forms the Constitution would, at first sight, be merely to examine the terms of the enabling powers on the same principle as any grant of authority in any Act is examined, and accept as final the result of such examination. But the majority of the High Court as now constituted have adopted a different maxim of interpretation : they will not merely consider the question of normal interpretation, but will add to the criteria by which the language of the grant is measured the doctrines of the immunity of instrumentalities, and the doctrine of implied prohibition or reserved powers. These principles assert, briefly speaking, that neither a State instrumentality nor a Commonwealth instrumentality can be allowed to be interfered with by the Commonwealth or State respectively unless such interference is clearly expressed or implied in the Constitution; and secondly, that the Constitution is to be read as conferring upon the States exclusive authority in matters not assigned to the Commonwealth, so that such an interpretation must be placed on the Acts of the Commonwealth as will reserve to the States the powers which the Constitution intended to leave to them, unless there is clear evidence to show that the Commonwealth in any particular matter was intended to exercise a right contrary to the general reservation of power to the States.

(*To be continued.*)

THE INDIAN COUNCILS ACT, 1909.[1]

[*Contributed by* SIR COURTENAY ILBERT, K.C.B., K.C.S.I.]

THE Indian Councils Act, 1909 (9 Ed. VII. c. 4), the passage of which will always be associated with the name of Lord Morley of Blackburn, made important changes in the constitution and functions of the Indian legislative councils, and gave power to make changes in the executive governments of the Indian provinces.

The introduction of the measure was preceded by discussions and correspondence, which began in Lord Morley's first year of office as Secretary of State for India, and extended over a period of nearly three years.

In 1906 the Viceroy, Lord Minto, drew up a minute in which he reviewed the political situation in India, and pointed out how the growth of education, encouraged by British rule, had led to the rise of important classes claiming equality of citizenship, and aspiring to take a larger part in shaping the policy of the government. He then appointed a committee of his council to consider the group of questions arising out of these novel conditions. From the discussion thus commenced was developed a tentative project of reform, which was outlined in a Home Department letter to local governments dated August 24, 1907. This letter, after having received approval by the Secretary of State in Council, was laid before Parliament, and was published in England and India.[2] The local governments to whom it was addressed were instructed to consult important bodies and individuals representative of various classes of the community before submitting their own conclusions to the Government of India. The replies were received in due course, and are to be found in the "colossal blue-books" appended to a letter from the Government of India, dated October 1, 1908, in which the situation is again reviewed, and revised proposals are formulated. The views of the Secretary of State on these proposals are expressed in a dispatch dated November 27, 1908,[3] and were expounded by Lord Morley in a speech delivered in the House of Lords on December 17, 1908.

[1] This article is taken from a supplementary chapter to the second edition of the author's *Government of India*. The chapter, which contains corrections and additions, bringing the book up to date, was published by the Clarendon Press in 1910, and may be obtained either separately or bound up with the volume to which it is appended.

[2] East India (Advisory and Legislative Councils, etc.), 1907, Cd. 3710.

[3] The letter of October 1, 1908, and the dispatch of November 27, 1908, are to be found in vol. i. of the blue-book entitled East India (Advisory and Legislative Councils, etc.), 1908, Cd. 4425. The replies from the local governments are embodied in separate volumes.

Reference was made to the subject in the King's Speech which ushered in the session of 1909, and in the debates on the address in reply. The Bill embodying the proposals of the Government, so far as they required Parliamentary authority, was presented by Lord Morley on February 17, 1909, and was read a second time, after a debate of two days, on February 24. It passed through committee on March 4, and was considered on report, read a third time, and passed by the House of Lords on March 9. In the House of Commons the Bill was read a second time on April 1, was considered in committee on April 19, and on April 26 was considered on report, read a third time, and passed with amendments. The Commons' amendments were considered on May 4 and agreed to with an important modification which was accepted by the Commons. The Act thus passed received the Royal Assent on May 25, 1909.

The only important change in the Bill during its passage through Parliament related to the creation of executive councils for provinces under lieutenant-governors. Clause 3 of the Bill as introduced enabled the Governor-General in Council, with the approval of the Secretary of State in Council, by proclamation, to create an executive council for any such province. This clause was struck out by the House of Lords, restored by the House of Commons, and eventually agreed to in the modified form in which it now stands as s. 3 of the Act.

In the course of the debates on the Bill much was said about Lord Morley's announcement of his intention to appoint a native of India to a post on the Governor-General's council. This subject was not strictly relevant to the Bill, because, as was explained, the power of making these appointments is free from any restriction as to race, creed, or place of birth. Effect was given to Lord Morley's intention by the appointment of Mr. Sinha, in March 1909, to the post of law member of the Governor-General's council. This appointment carried a step further the policy adopted in 1907, when two natives of India were placed on the Secretary of State's council. In pursuance of the same policy a native of India has been placed on the executive councils for Madras and Bombay respectively, and is to be placed on the new executive council for Bengal.

Under s. 1 of the Act the "additional" members of the Indian legislative councils, *i.e.* those other than the members of the executive councils, must, instead of being all nominated, include elected members.

By s. 2 power is given to raise the number of members of the executive councils for Madras and Bombay to a maximum of four, of whom two at least must be persons who at the time of their appointment have been in the service of the Crown in India for at least twelve years.

Under s. 3 there is power to constitute an executive council for any province having a lieutenant-governor. But, except in the case of Bengal, the draft of any proclamation proposed to be made in pursuance of this power must be laid before each House of Parliament, and the proclamation may be

disallowed in pursuance of an address from either House. The number of the executive council must not exceed four.[1]

S. 4 requires the appointment of vice-presidents of the several councils.

By s. 5 the Governor-General in Council, the governors in council of Madras and Bombay, and the lieutenant-governors or lieutenant-governors in council of other provinces are required to make rules authorising at any meeting of their respective legislative councils the discussion of the annual financial statement, and of any matter of general interest, and the asking of questions.

Under ss. 1 and 6 there is extensive power to make regulations for carrying the Act into effect.

And under s. 7 certain proclamations, regulations, and rules are required to be laid before Parliament when made.

It will be seen that the provisions of the Act of 1909 are, as is usual in Acts relating to India, couched in wide and general terms, leaving all details, and some important matters of principle, to be determined by regulations and rules made by the authorities in India.

The regulations and rules required to give effect in the first instance to the Act of 1909 are to be found in a blue-book which was laid before Parliament in pursuance of s. 7 of the Act.[2]

The blue-book begins with a notification fixing November 15, 1909, as the date at which the provisions of the Act were to come into operation.

Then follow, under the headings Nos. II. to IX., regulations and rules for the nomination and election of the members of the several legislative councils of India, other than those who are such members by virtue of being members of the executive councils. The regulations are, in the case of each council, of a general character, and relate to such matters as number, qualifications, term of office, and mode of filling vacancies. The rules, which are scheduled to the regulations, are more detailed, and prescribe the mode in which the several elections are to be made.

In No. X. are to be found important rules regulating the business of the Governor-General's legislative council, and relating to (1) the discussion of the annual financial statement, (2) the discussion of matters of general public interest, and (3) the asking of questions.

No. XI. is a Home Department resolution of the Government of India, dated November 15, 1909, which describes in general terms the nature of the changes made by the Act of 1909, and the regulations under it, and has appended to it a table showing the constitutions of the several legislative councils.

The changes made in the legislative councils by the Act of 1909, and the regulations and rules under it, may be considered under the heads of (*a*) Constitution and (*b*) Functions.

[1] An executive council of three members is being constituted for Bengal.

[2] East India (Executive and Legislative Councils) Regulations, etc., for giving effect to the Indian Councils Act, 1909 (1910, Cd. 4987).

A.—CONSTITUTION.

The constitution of the councils is changed in three respects:

1. Numbers;
2. Proportion of official and non-official members;
3. Methods of appointment or election.

1. Numbers.

The Indian Councils Act, 1892, increased the size of the legislative councils constituted under the Act of 1861. The maximum of additional members was raised from 12 to 16 in the Governor-General's council, and from 8 to 20 in the Madras and Bombay councils. The limit of number of the Bengal council was raised to 20, that of the United (then North-Western) Provinces to 15. The Punjab and Burma obtained legislative councils in 1897, and Eastern Bengal and Assam in 1905, the maximum strength being fixed at 15 in the first two, and 20 in the third.

These numbers are now doubled or more than doubled. The additional members of the Governor-General's council are to be not more than 60, the additional members of the councils of Madras and Bombay, and the members of the councils of Bengal, the United Provinces, and Eastern Bengal and Assam, are to be not more than 50. In Punjab and Burma the maximum is raised to 30. In computing the number of members of the Governor-General's council, 8 must be added to the "additional" members, namely, the 6 ordinary members of the executive council, the commander-in-chief, and the lieutenant-governor of the province in which the council sits. Similarly there are now on the Madras and Bombay legislative councils 4 *ex-officio* members, namely, in each case, the 3 members of the executive council and the advocate-general; and on the Bengal legislative council there will be the 3 ordinary members of the new executive council.

Thus the actual strength of the legislative councils under the new law is as follows:[1]

Legislative Council of—	Number under Regulations of 1909.	Maximum number under Act of 1909.
India	68	68
Madras	48	54
Bombay	48	54
Bengal	53	53
United Provinces	48	50
Eastern Bengal and Assam	42	50
Punjab	26	30
Burma	17	30

[1] Excluding in each case the head of the Government, *i.e.* the Governor-General, Governor, or Lieutenant-Governor.

2. Proportion of Official and Non-Official Members.

Under the Act of 1861 at least one-half of the additional members of the legislative councils of the Governor-General's council and the councils of Madras and Bombay, and at least one-third of the members of the other legislative councils, must be non-official. An official majority was not required by statute, but in practice was always maintained before the Act of 1909, except in Bombay, where the official members had been for some years in a minority.

Under the regulations of 1909 there must be an official majority in the Governor-General's legislative council, and a non-official majority in all the other legislative councils. The existing proportions, as fixed by the regulations, are as follows:

Legislative Council of—	Officials.	Non-Officials.	Majority.
India	36	32	Official. 4
Madras	20	26	Non-official. 6
Bombay	18	28	10
Bengal	20	31	11
United Provinces	20	26	6
Eastern Bengal and Assam	17	23	6
Punjab	10	14	4
Burma	6	9	3

These figures exclude in each case the head of the government, *i.e.* the Governor-General, Governor, or Lieutenant-Governor. They also leave out of account the two "expert" members who may be appointed from time to time as occasion requires, and who may be either official or non-official.[1] Any alteration in the number of the executive council would affect the proportions.

It will be observed that these proportions are fixed by the regulations, not by statute. They were so picked in pursuance of the policy announced by the Secretary of State, who was of opinion that while it was necessary to maintain an official majority in the Governor-General's council, this was not necessary or desirable in the case of the other councils. Refusal by the provincial councils to pass necessary legislation may be met by exercise of the power vested in the Governor-General's council to legislate for any part of India. Undesirable legislation may be checked by the power of veto reserved to the head of the Government.

[1] There is no provision for the appointment of experts, as such, on the Governor-General's legislative council, but experts could be placed on the council, when occasion requires, under his powers of nominating members.

3. Methods of Appointment or Election.

Under the Act of 1861 the "additional" members of the legislative councils were nominated by the Governor-General, Governor, or Lieutenant-Governor, the only restriction on his discretion being the requirement to maintain a due proportion of unofficial members.

By the Act of 1892 the nominations were required to be in accordance with regulations made by the Governor-General in Council and approved by the Secretary of State. Under the regulations so made a certain number of these nominations had to be made on the recommendation of specified persons, bodies, and associations, the intention being to give a representative character to the persons so nominated. There was no obligation to accept the recommendation, but in practice it was never refused. In the case of other nominations regard was to be had to the due and fair representation of the different classes of the community.[1] Under the Act of 1909 the additional members must include not only nominated members, but also members elected in accordance with regulations made under the Act, and the regulations of November 1909 give effect to this requirement.

There is a separate set of regulations for every legislative council, and scheduled to each set are detailed rules as to the method of election.

The provisions of the regulations themselves are of a more general character, and those framed for the Governor-General's council may be treated as typical.

They begin by fixing the number of "additional" members, classifying them as elected or nominated, describing in general terms the classes or bodies by whom the elected members are to be elected, and defining by reference to the schedules the constitution of the electorate and the method of election.

The substitution of a system of election for a system of nomination obviously involves the imposition of certain disqualifications for election. These qualifications are laid down for the Governor-General's council by Regulation IV., which provides that—

No person shall be eligible for election as a member of the Council if such person

(*a*) is not a British subject; or
(*b*) is a female; or
(*c*) has been adjudged by a competent civil Court to be of unsound mind; or
(*d*) is under twenty-five years of age; or
(*e*) is an uncertificated bankrupt or an undischarged insolvent; or
(*f*) has been dismissed from the Government service; or

[1] See *Government of India*, pp. 115, 116, 119.

(*g*) has been sentenced by a criminal Court to imprisonment for an offence punishable with imprisonment for a term exceeding six months, or to transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed, or remitted, or the offender pardoned; or

(*h*) has been debarred from practising as a legal practitioner by order of any competent authority; or

(*i*) has been declared by the Governor-General in Council to be of such reputation and antecedents that his election would, in the opinion of the Governor-General in Council, be contrary to the public interest.

But in cases (*f*) (*g*) (*h*) and (*i*), the disqualification may be removed by an order of the Governor-General in Council in that behalf.

Identical provisions are embodied in all the other sets of regulations, except that the powers exercisable by the Governor-General in Council may be exercised by the Governor in Council or Lieutenant-Governor.

The positive qualifications both of electors and of candidates are fixed by the scheduled rules, but by the regulations females, minors, and persons adjudged to be of unsound mind are disqualified from voting.

Every person elected or nominated must, before taking his seat, make an oath or affirmation of his allegiance to the Crown.

The ordinary term of office of an "additional" member, whether nominated or elected, is three years. But official members and members nominated as being persons who have expert knowledge of subjects connected with proposed or pending legislation are to hold office for three years or such shorter period as the Governor-General may at the time of nomination determine. A member elected or nominated to fill a casual vacancy sits only for the unexpired portion of his predecessor's term. The effect of these provisions, which are repeated in substance in all the sets of regulations, is that for elected members of the legislative councils there must be a general election every three years.

The regulations provide for declaring seats vacant, for choice or determination of seat in case of a candidate elected by more than one electorate, and for the case of failure to elect.

An election is declared to be invalid if any corrupt practice is committed in connection therewith by the candidate elected, and provision is made for the determination of disputes as to the validity of elections.

The elaborate rules scheduled to the regulations under the Act of 1909 show the number and diversity of the electorates to the legislative councils, and the variety of methods adopted for constituting the electorates, and for regulating their procedure in elections. The object aimed at was to obtain, so far as possible, a fair representation of the different classes and interests in the country, and the regulations and rules were framed for this

purpose in accordance with local advice, and with reference to the local conditions of each province. The consequent variety of the rules makes it impossible to generalise their provisions or to summarise their contents. All of them may be regarded as experimental, some of them are avowedly temporary and provisional. For instance, it has not yet been found practicable to constitute satisfactory electorates (1) for the representatives of Indian commerce, except in the Bombay council, (2) for the representatives of the Punjab landholders and Muhammadans on the Governor-General's council, or (3) for the representative of the planting community on the Bengal council. Under the existing regulations each of these interests is represented by nominated members, but election is to be substituted for nomination as soon as a workable electorate can be formed.

The most difficult of the problems to be faced was the representation of Muhammadans, who claimed to be represented as a separate class or community. This problem has been attacked in various ways. One method adopted is a system of rotation. The representative of the Bombay landholders on the Governor-General's council was elected at the first, and is to be elected at the third and subsequent alternate elections, by the landholders of Sind, a great majority of whom are Muhammadans, while at other elections he is to be elected by the Sardars of Gujerat or the Sardars of the Deccan, a majority of whom are Hindus. In the Punjab the numbers of the Muhammadan and non-Muhammadan landholders are about equal and the representative of this constituency is expected to be alternately a Muhammadan and a non-Muhammadan. When these two seats, the Bombay seat and the Punjab seat, are held by non-Muhammadans, there are to be two members elected by special electorates consisting of Muhammadan landholders in the United Provinces and in Eastern Bengal and Assam respectively.

In some provinces there are special interests, such as the tea and jute industries in Eastern Bengal and Assam, and the planting communities in Madras and Bengal, for whom special provision has been made.

The representation of smaller classes and minor interests will have to be met by nomination, in accordance with the needs of the time and the importance of different claims.

Where the electorates are scattered, as in the case of the landholders and the Muhammadans, provision is made for the preparation and publication of electoral rolls containing the names of all persons qualified to vote.

The qualifications prescribed for electors in the case of landholders and Muhammadans vary greatly from province to province. Landholders must usually possess a substantial property qualification. In some cases titles and honorary distinctions, fellowships of Universities, and pensions for public service are recognised as qualifications.

The qualifications for candidates are, as a rule, the same as those for electors, but in some cases, where such restrictions would be inappropriate,

other qualifications are prescribed. Thus a person elected to the Governor-General's council by the unofficial members of a provincial council is required to have a place of residence within the province, and such practical connection with the province as qualifies him to represent it. The election is either direct, or indirect through elected delegates. In some cases the electors or delegates vote at a single centre before a returning officer, in others they vote at different places before an attesting officer, who dispatches the voting paper to the returning officer.

In Bengal each delegate has a varying number of votes, the number depending in the case of district boards and municipalities on the income of these bodies, and in the case of the Muhammadan community on the strength and importance of the Muhammadan population of a district or group of districts. Elsewhere the same object has been obtained by varying the number of delegates on like grounds, each delegate then having one vote.

The member of the Governor-General's council chosen to represent the Muhammadan community of Bombay is elected by the Muhammadan members of the Bombay council. The Government of India were assured that this method would secure better representation than election by delegates *ad hoc*.

The procedure for voting is generally similar to that prescribed by the English Ballot Act. But in some cases, such as the elections by the corporations of the presidency towns, the chambers of commerce and the trade associations, the voting is regulated by the procedure usually adopted by these bodies for the transaction of their ordinary business.

B.—FUNCTIONS.

The functions of the legislative councils fall into three divisions, (*a*) legislative, (*b*) deliberative, and (*c*) interrogatory.

(*a*) Legislative.

The Act of 1909, and the regulations under it, make no alteration in the legislative functions and powers of the provincial councils. These are still mainly regulated by the Act of 1861.[1]

(*b*) Deliberative.

Between 1861 and 1892 the powers of the legislative councils were confined strictly to legislation.[2] The Act of 1892 introduced non-legislative functions by empowering the head of the government in every case to make rules authorising the discussion of the annual financial statement, provided that no member might propose a motion or divide the council. Under this

[1] See Digest, ss. 63–7, 76–8. [2] See Digest, ss. 64, 77.

power one or two days were allotted annually in every council to the discussion of a budget already settled by the executive government.

The Act of 1909 repealed the provisions of the Act of 1892 on this point and required rules to be made authorising at any meeting of the legislative councils the discussion of the annual financial statement and of any matter of general public interest.[1]

The rules made under this direction introduce two important changes:

(i) The discussion of the budget is to extend over several days, it takes place before the budget is finally settled, and members have the right to propose resolutions and to divide the council upon them:

(ii) At meetings of the legislative councils matters of general public importance may be discussed, and divisions may be taken on resolutions proposed by members.

In each case the resolutions are to take the form of recommendations to the government, and the government is not bound to act upon them.

The rules framed for the Governor-General's council are printed in the blue-book of 1910,[2] and are of much interest and importance.[3] It may be useful to summarise here some of their leading provisions.

Financial Statement or Budget.—The rules distinguish between the financial statement and the budget. The first means the preliminary financial estimates of the Governor-General in Council for the financial year next following. The second means the financial statement as finally settled by the Governor-General in Council. On a day appointed in each year by the Governor-General, the financial statement, with an explanatory memorandum, is to be presented to the council by the finance member, and a printed copy is to be supplied to each member. No discussion takes place on this day.

The first stage of discussion takes place on a subsequent day after the finance member has made any explanations he thinks necessary. On this day any member may move any resolution entered in his name in the list of business relating to any alteration in taxation, new loan, or additional grant to local governments proposed or mentioned in the financial statement or explanatory memorandum, and a discussion takes place on any resolution so moved.

The second stage of discussion begins after these resolutions have been disposed of. The member of council in charge of a department explains the head or heads of the financial statement relating to his department, and resolutions may then be moved and discussed.

The range of discussion is subject to important restrictions. There is a schedule to the rules defining which heads of the financial statement are open to or are excluded from discussion. Among the excluded heads are military,

[1] 8 Edw. VII. c. 4, s. 5. [2] 1910, Cd. 4987.

[3] The rules for the other councils are not included in the blue-book, but are framed on similar lines.

political, and purely provincial affairs, under the heading "revenue," stamps, customs, assessed taxes, and courts, and, under the heading "expenditure," assignments and compensations, interest on debt, ecclesiastical expenditure, and state railways. Besides these the rules themselves exclude from discussion any of the following subjects :

(*a*) Any subject removed from the discussion of the Governor-General's legislative council by s. 22 of the Indian Act, 1861 ;[1]

(*b*) Any matter affecting the relations of His Majesty's Government or of the Governor-General in Council with any foreign State or any native State in India ; or

(*c*) Any matter under adjudication by a court of law having jurisdiction in any part of His Majesty's dominions.

Any resolution moved must comply with the following conditions :

(*a*) It must be in the form of a specific recommendation addressed to the Governor-General in Council ;

(*b*) It must be clearly and precisely expressed and must raise a definite issue ;

(*c*) It must not contain arguments, inferences, ironical expressions, or defamatory statements, nor refer to the conduct or character of persons except in their official or public capacity ;

(*d*) It must not challenge the accuracy of the financial statement ;

(*e*) It must be directly relevant to some entry in the financial statement.

Two clear days' notice of any resolution must be given. The president may disallow any resolution or part of a resolution without giving any reason other than that in his opinion it cannot be moved, or that it should be moved in a provincial council, and his decision cannot be challenged.

The budget as finally settled must be presented to the council on or before March 24 by the finance member, who then describes any changes made in the figures of the financial statement, and explains why any resolutions passed by the council have not been accepted. No discussion takes place on this day, but on a subsequent day there is to be a general discussion at which observations may be made, but resolutions may not be moved. Nor is the budget as a whole to be submitted to the vote of the council.

Many of the rules for regulating procedure in debate are of a kind with which members of the House of Commons are familiar, but some of them present distinctive features. No speech may exceed fifteen minutes, except those of the mover and the member in charge, who may speak for thirty minutes. Any member may send his speech in print to the secretary not less than two clear days before the day fixed for the discussion of a resolu-

[1] *I.e.* matters which the Governor-General in Council has not power to repeal or affect by any law. See Digest, s. 63.

tion, with as many copies as there are members, and one copy is to be supplied to every member. Any such speech may at the discretion of the president be taken as read.

Matters of General Public Interest.—Discussions on these matters must be raised by resolution, and must take place after all the other business of the day has been concluded. The general rules regulating the form of the resolutions, and the discussions upon them, are, in the main, the same as those for the discussion of resolutions on the financial statement, the chief difference being that the range of discussions is wider and that amendments are allowed. The only subjects specifically excluded from discussion are those belonging to the three classes mentioned above in connection with the financial statement, namely, matters for which the councils cannot legislate, matters relating to foreign and native States, and matters under adjudication by a court of law. But the president has the same discretionary power of disallowing resolutions as he has in the case of resolutions on the financial statement.

The right to move amendments on resolutions is made subject to restrictions which are intended to provide safeguards against abuse of the right. Fifteen days' notice of a resolution is required, and priority depends on the time of receipt. When a question has been discussed, or a resolution has been disallowed or withdrawn, no resolution or amendment raising substantially the same question may be moved within one year.

(*c*) Interrogatory.

Since 1892 members of the legislative councils have had the right to ask questions under conditions and restrictions prescribed by rules. This right is now enlarged by allowing a member to put a supplementary question "for the purpose of further elucidating any matter of fact regarding which a request for information has been made in his original question." But the president may disallow a supplementary question, and the member to whom it is addressed may decline to answer it without notice. The rules which now govern the asking of questions in the Governor-General's council are printed in the blue-book of 1910.

The quorum for the transaction of business, legislative or other, at meetings of the Governor-General's legislative council is fixed by one of the regulations of November 15, 1909, for the constitution of that council. Regulation XIII. provides that, in addition to the Governor-General, President, Vice-President, or other member appointed to preside, there must be present fifteen or more members of the council, of whom eight at least must be additional members. There are similar provisions in the regulations for the other councils.

NOTES ON THE PRESUMPTIONS OF DEATH AND SURVIVORSHIP IN ENGLAND AND ELSEWHERE.

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These notes deal briefly, but not exhaustively, from the point of view of comparative jurisprudence (i) with the presumption of the fact of death from long absence, where there is no direct evidence of death, and (ii) with the presumption of survivorship amongst persons who have perished in a common disaster.

I. The Presumption of Death from Long Absence.

In England. [1]—There is no presumption *of law* in favour of the continuance of life, which is altogether a matter of evidence in each case.[2] There is, however, a disputable presumption *of fact* in favour of the continuance of life for any reasonable time after a person has been last heard of,[3] and, where the issue is on the life or death of a person who is proved to have once existed, the onus is on the party asserting the death.[4] In the case, however, of a person who has not been heard of for seven years by those who would naturally have received intelligence of or from him, had he been alive, or after search

[1] Includes Ireland.

[2] *In re Phene's Trusts*, (1869) L.R. 5 Ch. App. 139; see also *In re Aldersey—Gibson* v. *Hall*, (1905) 2 Ch. 181; *In re Green's Settlement*, (1865) L.R. 1 Eq. 288; *Lapsley and others* v. *Grierson*, (1848) 1 H.L. Cas. 498; *The Queen* v. *Lumley*, (1869) L.R. 1 C.C.R. 195; *In re the Goods of Connor*, (1892) 29 L.R. Ir. 261. There are, unquestionably, *dicta* and decisions (see *In re Benham's Trusts*, 1867, L.R. 4 Eq. 416; *Thomas* v. *Thomas*, 1864, 2 Dr. & Sm. 298, 303; *per* Lord Coleridge C.J. in *R.* v. *Willshire*, 1881, 6 Q.B.D. 366; *per* Lord Denman C.J. in *Nepean* v. *Doe d. Knight*, 1837, 2 M. & W. at p. 913; *per* Lord Ellenborough C.J. in *Doe* v. *Jesson*, 1805, 6 East. at p. 851; *Hopwell* v. *De Pinna*, 1809, 2 Camp. 113; *In re Rhodes—Rhodes* v. *Rhodes*, 1887, 36 Ch.D. 584; Taylor on *Evidence*, 10th ed. vol. i. pp. 192 *et seq.*) to the effect that until seven years have elapsed since a person was last heard of, the continuance of life must be presumed (*per* Curiam in *In re the Goods of Connor*, 1892, 29 L.R. Ir. at p. 264). This doctrine, imported from the civil law, has, however, been conclusively overruled (*ibid.*; and see *In re Phene's Trusts, supra*).

[3] *In re the Goods of Connor, supra; In re Phene's Trusts, supra.*

[4] *Wilson* v. *Hodges*, (1802) 2 East. 312; *Watson* v. *King*, (1815) 1 Stark. 121; *Throgmorton* v. *Walton*, (1624) 2 Roll. Rep. 461; *per* Lord Denman C.J. in *Nepean* v. *Doe d. Knight*, (1837) 2 M. & W. at p. 913; *In re Corbishley's Trusts*, (1880) 14 Ch.D. 846; *M'Mahon* v. *M'Elroy*, (1869) Ir. Rep. 5 Eq. 1.

has been ineffectually made to find him,[1] there arises a presumption of law that he is dead,[2] in the absence of circumstances negativing such presumption and satisfactorily accounting for his absence and silence.[3] This presumption of death depends wholly upon the length of the unexplained absence, without news of the absentee, and not at all on his age. Death will not, therefore, be presumed merely because the birth of the absentee occurred so long ago that, to assume continued existence, would be preposterous, having regard to the ordinary duration of human life.[4]

This period of seven years, which, it may be mentioned, gives rise to the presumption of death, not only where persons have gone abroad, but also where the absence is from a person's usual place of resort,[5] has been adopted from analogy to the statute 1 Jac. I. c. 11, s. 2,[6] relating to bigamy, and to a still unrepealed statute (19 Car. II. c. 16) relating to the continuance of lives on which leases are held.[7] Whether, in these days of rapid and constant communication between all parts of the world, and swift dissemination of news by telegraph, the presumption of death might not without injustice be, in ordinary cases, raised after the lapse of a somewhat shorter period than seven years, is a question in regard to which opinions will probably differ. In probate cases, however, it is to be noticed that where it is sought to presume death for purposes of administration on the ground merely of lapse of time, the Court is not bound by any hard-and-fast

[1] See *Doe d. France* v. *Andrews*, (1850) 15 Q.B. 756.

[2] *Doe d. Knight* v. *Nepean*, (1833) 5 B. & Ad. 86; S.C. in Exch. Ch. 2 M. & W. 894, 914; *In re Creed*, (1852) Drew. 235; *Gibson* v. *Hall*, (1905) 2 Ch. 181; *Williams and others* v. *Scottish Widows' Fund Life Insurance Co.*, (1888) 4 T.L.R. 489; *Thorne* v. *Rolfe*, (1559) Anders. 20; *Webster* v. *Birchmore*, (1807) 13 Ves. 362; *Doe d. Banning* v. *Griffin*, (1812) 15 East. 293; *Lee* v. *Willcock*, (1802) 6 Ves. 605; *Rust* v. *Baker*, (1837) 8 Sim. 443; *In re Rhodes—Rhodes* v. *Rhodes*, (1887) 36 Ch.D. 586; *In re Benjamin—Neville* v. *Benjamin*, (1902) 1 Ch. 723.

[3] See *Watson* v. *King*, (1844) 14 Sim. 28; *Bowden* v. *Henderson*, (1854) 2 Sm. & G. 360; *Lakin* v. *Lakin*, (1865) 34 Bean. 443. The death of a defaulting solicitor was, however, presumed, after seven years' absence, although he absconded and would therefore be anxious to conceal his identity and whereabouts (*Wells* v. *Palmer*, 1905, 53 W.R. 169).

[4] *Atkins* v. *Warrington*, 1 Chit. Plead. 6th ed. 258, where the Court refused to assume judicially that a person alive in the year 1034 was not still living in the year 1827. See also *Benson* v. *Olive*, (1732) 2 Str. 920; Best on *Presumptions of Law and Fact*, p. 190. It will be seen, *post*, that many of the contemporary Codes Civil presume death after a prescribed period of years (sometimes one hundred, sometimes less) have elapsed since the birth of an absent person.

[5] See *Dunn* v. *Snowden*, (1862) 2 Dr. & Sm. 201; *Doe d. Lloyd* v. *Deakin*, (1821) 4 B. & Ald. 433; *Bailey* v. *Hammond*, (1802) 7 Ves. 590; *Roe* v. *Hasland*, (1762) 1 W. Black. 404; Best on *Presumptions of Law and Fact*, p. 191.

[6] Repealed, but re-enacted, in the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57.

[7] *Per* Littledale J. in *R.* v. *Harborne*, (1835) 2 Ad. & El. at p. 546; see also *Doe* v. *Jesson*, (1805) 6 East. at p. 85; *Nepean* v. *Doe d. Knight*, (1837) 2 M. & W. at pp. 912, 913; *In re Pople—Ex parte Baker*, (1889) 40 Ch.D. 589.

rule as to the necessity of the expiration of seven years, though it may adopt the rule as a matter of caution,[1] and certainly regards it as a fair ground, in most cases, for presuming death,[2] which, however, will not be presumed, even after the lapse of twenty-five years, until the Court is satisfied that it has before it the best evidence that can reasonably be obtained on the subject,[3] it being a general rule of practice in the Probate Division that no death shall be presumed merely on the ground that the supposed deceased has disappeared for many years, and is probably dead.[4] On the other hand, death will, even in probate cases, sometimes be presumed, as where there has been a shipwreck, involving loss of life,[5] after a comparatively short period (*e.g.* two years) has elapsed since the supposed deceased was last heard of.[6] Moreover, the Probate Division will usually accept a grant, made by a foreign Court of competent jurisdiction, on the presumption of the testator's or intestate's death, as sufficient proof of death, without requiring the fact to be established by independent evidence.[7]

Though the Court of Chancery will act upon the general rule that a man's death is to be presumed after seven years' unexplained disappearance, the rule admits of exceptions, and the Court is bound to consider the circumstances of each particular case, in order to see whether the presumption is rebutted, or rather whether it fairly arises.[8] In some circumstances death will be presumed in the Chancery Division after less than seven years have elapsed since a person has been last heard of.[9]

[1] *In the Goods of Winstone*, (1898) P. 143.

[2] *In the Goods of Elizabeth How*, (1858) 1 Sw. & Tr. 53; *In the Goods of Peck*, (1860) 2 Sw. & Tr. 506; *In the Goods of Turner*, (1864) 3 Sw. & Tr. 476.

[3] *In the Goods of Robertson*, (1896) P. 8; *In the Goods of Clarke*, (1896) P. 287.

[4] *In the Goods of Robertson*, (1895) 65 L.J.P. 16. Where the death of a deceased is presumptive, the Probate Court gives the applicant leave to swear the death and the facts must be deposed to (*Re Jackson*, 1903, 87 L.T. 747).

[5] For the practice in probate cases for obtaining an order for presumption of death, where persons are supposed to have been lost at sea, *vide* Tristram & Coote's *Probate Practice*, 14th ed. p. 272. *In the Goods of Sir Claude Robert Campbell, Bt.*, (1910) *Times*, Oct. 25, p. 3. In *In the Estate of Walker*, (1909) P. 115, administration was granted to the creditors of a man who was missed from a cross-Channel steamer when four miles from the port of arrival, on proof of circumstances, and notice to his widow and daughter, who had refused to take out administration as they believed him to be alive.

[6] *In the Goods of Norris*, (1858) 1 Sw. & Tr. 6; *In the Goods of Bishop*, (1859) 1 Sw. & Tr. 303, S.C. 28 L.J.P. 93; *In the Goods of Main*, (1858) 1 Sw. & Tr. 11; *In the Goods of Dodd*, (1897) 77 L.T. 137.

[7] *In the Goods of Spenceley*, (1892) P. 255. The Probate Division will not, as a rule, give leave to presume the death of a person other than the one whose estate is in question: *In the Goods of Clark*, (1888) 15 P.D. 10. If the whole of a deceased's estate does not exceed £100, the order for presumption of death can be made by one of the Probate Registrars (Tristram & Coote's *Probate Practice*, 14th ed. p. 272).

[8] *M'Mahon* v. *M'Elroy*, (1869) 5 Ir. R. Eq. 1; see also *Hickman* v. *Upsall*, (1876) 4 Ch.D. 144; *Dobson* v. *Pattinson*, (1857) 12 Jur. N.S. 1202; *Grissall* v. *Stilfox*, (1845) 9 Jur. 890.

[9] See *In re Beasney Trusts*, (1869) L.R. 7 Eq. 498; *Lakin*, v. *Lakin*, (1865) 34 Beav. 443; *Hickman* v. *Upsall*, (1875) L.R. 20 Eq. 136; *Sillick* v. *Booth*, (1841) 1 You. & Coll. C.C. 117; *Danby* v. *Danby*, (1859) 5 Jur. N.S. 54.

The Merchant Shipping Act, 1894,[1] provides that, in any proceedings by the Board of Trade for the recovery of wages due to seamen lost with their ship, if it is shown by evidence that the ship has twelve months or upwards before the institution of such proceedings left the port of departure, she shall, unless it is shown that she has been heard of within twelve months after that departure, be deemed to have been lost, with all hands on board, either immediately after the time she was last heard of, or at such later time as the Court hearing the case may think probable.[2] This particular presumption is, however, available only in the matters to which the enactment relates, namely, the recovery of seamen's wages.

Absence for any length of time is not *per se* a ground of divorce in England, though desertion by a husband, without reasonable excuse, for two years and upwards, coupled with adultery, entitles a wife to a dissolution of the marriage,[3] while his desertion alone for a like period is a ground for a judicial separation.[4] On the other hand, a second marriage by either spouse, where the other has been continuously absent for the last seven years, is not felonious, unless contracted with knowledge that the absent spouse was living within that time.[5] Moreover, when, upon a trial for bigamy, it is proved that the prisoner and the absent spouse have lived apart for the seven years preceding the second marriage, the onus is upon the prosecution to show that during that time the prisoner was aware of the absent spouse's existence.[6]

There is no presumption of law, in England, as to *the time* of the death of a person whose death from long absence is presumed, it being for a jury to determine the question upon the particular facts of each case.[7] It is indeed often a matter of complete uncertainty at what point of time, during the seven years, the absentee died, and, of all the points of time, the last day is certainly the most improbable and the most inconsistent with the ground for presuming the fact of death, as the presumption of such fact seems rather to lead to the conclusion that death took place some considerable

[1] 57 & 58 Vict. c. 60. [2] *Ibid.* s. 174 (2).

[3] The Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 27. [4] *Ibid.* s. 16.

[5] The Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57.

[6] *The Queen* v. *Curgerwen*, (1865) L.R. 1 C.C.R. 1; *The Queen* v. *Tolson*, (1889) 23 Q.B.D. 168.

[7] *Doe d. Knight* v. *Nepean*, (1833) 5 B. & Ad. 86; S.C. (in Exch. Ch.), (1837) 2 M. & W. 894; *In the Goods of Peck*, (1860) 2 Sw. & Tr. 506; *In the Goods of How*, (1858) 1 Sw. & Tr. 53; *Lambe* v. *Orton*, (1859) 29 L.J.Ch. 286; *In re Phené's Trusts*, (1869) 5 Ch. App. 139; *In re Aldersey—Gibson* v. *Hall*, (1905) 2 Ch. 181; *Doe d. Lloyd* v. *Deakin*, (1821) 4 B. & Ald. 433; *In re Benjamin*, (1902) 1 Ch. 723; *Webster* v. *Birchmore*, (1807) 13 Ves, 362; *Sillick* v. *Booth*, (1842) 6 Jur. 142, 144; *In re Lewis's Trusts*, (1871) L.R. 6 Ch. App. 356; *Thomas* v. *Thomas*, (1864) 2 Dr. & Sm. 298 (overruled, on another point, by *In re Phené's Trusts*, *supra*); *Rex* v. *Harborne*, (1835) 2 Ad. & El. 540. According to the head-note in *Drew* v. *Snowden*, (1862) 2 Dr. & Sm. 201, an absentee must be taken to have died on the last day of the seven years. There is nothing, however, in the reported judgment to justify such a note.

time *before* the expiration of the seven years.[1] Where, however, probable evidence is adduced to show that a party died at a particular time within the seven years, the Court may presume that the party died at that time.[2] On the other hand, if no sufficient evidence as to the time of death is forthcoming, the law will, *semble*, treat the fact as one incapable, under the circumstances of being determined.[3]

Scotland.—By the Common Law of Scotland, if a person disappears and cannot be traced, there is a presumption that he has lived on for a reasonable period, and, during that period, the onus of proving his death lies on the parties who aver the fact.[4] This presumption has, however, been modified by statute,[5] which practically applies to Scotland the English rule of law as to presumption of death in the case of persons domiciled in Scotland when last heard of.[6] That is to say, where persons have disappeared and not been heard of for seven years and upwards, the Court may, on the petition of persons having limited or other interests in the estate of the supposed deceased person, find on the facts proved or admitted that such person died at some specified date within seven years after the date on which he was last known to be alive.[7] Notwithstanding this finding, however, the claim of the absentee to his estate is not absolutely barred, in all respects, till after thirteen years from the date at which possession of the estate, or of the respective items thereof, have been obtained under the provisions of the Act.[8]

According to Scotch law, the absence of either spouse for four years, when it amounts to desertion (*i.e.* to malicious and obstinate non-adherence), is a ground of divorce.[9]

[1] *Per* Lord Denman C.J. in *Nepean* v. *Doe d. Knight*, (1837) 2 M. & W. at p. 913; *Webster* v. *Birchmore*, *supra*.

[2] *Webster* v. *Birchmore*, *supra*; *Rex* v. *Harborne*, *supra*; *Sillick* v. *Booth*, (1841) 1 You. & Coll. at p. 117.

[3] See *In re Aldersey—Gibson* v. *Hall*, *supra*; *Wing* v. *Angrave*, (1860) 8 H.L.C. 183; *Underwood* v. *Wing*, (1854) 4 De G.M. & G. 633. These were, it is true, cases in which the question involved was whether there was any evidence of survivorship of one of several persons who perished in a common calamity. They are, however, it is submitted, *in pari materia*.

[4] Erskine's *Principles of the Laws of Scotland*, 20th ed. p. 466; Maclaren's *Wills and Successions*, 3rd ed. vol. i. p. 65; and see *per* Lord Justice Clark Hope in *Fife* v. *Fife*, (1855) 17 D. 954.

[5] The Presumption of Life Limitation (Scotland) Act, 1891 (54 & 55 Vict. c. 29), repealing the Presumption of Life Limitation (Scotland) Act, 1881, (44 & 45 Vict. c 47). This Act does not apply to any claim against insurers under a policy of life assurance effected upon the life of any person who has disappeared (s. 11). It empowers the Court to dispense with consent of an absentee to the sale of property held *pro indiviso* (s. 4).

[6] The Presumption of Life Limitation (Scotland) Act, 1891 (54 & 55 Vict. c 29), s. 3.

[7] *Ibid.* [8] *Ibid.* s. 7.

[9] Conjugal desertion was made a ground of divorce by an Act of 1573, c. 55, which has been amended by s. 11 of the Conjugal Rights Act, 1861 (24 & 25 Vict. c. 86); and see *Murray* (1894), 21 R. 723.

India.—The Indian Evidence Act, 1872,[1] which is based on the principles of English law as to the burden of proof when the question at issue is whether a man is alive or dead,[2] provides that when the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it,[3] and that if it is proved that he has not been heard of for seven years by those who would naturally have heard of him had he been alive, the burden of proving that he is alive is shifted to the person who affirms it.[4] These enactments establish a uniform rule upon their subject-matter, both for Hindus and Mahomedans, as well as all others.[5] There is, however, no presumption of law relative to the continuance of life in the abstract,[6] and none as to the time of death, which must always be proved by actual evidence.[7] The Court has power, however, to find the fact of death from the lapse of a shorter period of absence than seven years, if the circumstances concur to justify such a finding.[8]

Desertion for two years and upwards is not a ground of divorce in India, unless it be coupled with adultery,[9] though it is of itself sufficient for a judicial separation.[10] However, the Indian Penal Code,[11] which punishes the offence of bigamy, excepts from its operation any person who contracts a marriage during the lifetime of a former husband or wife, if such husband or wife at the time of the subsequent marriage shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, *provided* the person contracting such subsequent marriage shall, before such marriage takes place, inform the person, with whom such marriage is contracted, of the real facts of the case, so far as they are within his or her knowledge.[12]

Cape of Good Hope.[13]—There is no authority for the general proposition that, by the law prevailing in this Colony, a person who has not been heard of for seven years is absolutely presumed to be dead.[14] But, by analogy to the English law, the Court holds that, in the Colony, seven years is sufficient to justify it in ordering the distribution of the property of an absent person, upon

[1] Act No. 1 of 1872.
[2] Rattigan's *Roman Law of Persons*, p. 93.
[3] Act No. 1 of 1872, s. 107.
[4] *Ibid.* s. 108, and see also s. 114.
[5] Ameer Ali & Woodroffe's *Law of Evidence applicable to British India*, 4th ed p. 573.
[6] *Ibid.* p. 573.
[7] *Ibid.*; and see *Dharup Nath* v. *Gobind Sarand*, (1884) 8 A. 614; *Rango Balaji* v. *Mudiyeppa*, (1898) 23 B. 296.
[8] Ameer Ali & Woodroffe's *Law of Evidence applicable to British India*, 4th ed. p. 573.
[9] The Indian Divorce Act (No. IV. of 1896), s. X.
[10] *Ibid.* s. XXII.
[11] Act XLV. of 1860.
[12] *Ibid.* s. 494; and see Hamilton's *Indian Penal Code*, p. 542.
[13] Such Colonies as possess Codes, namely, Mauritius, Lower Canada, St. Lucia, are dealt with *post.*
[14] *Per* De Villiers C.J. in *In re Booysen*, (1880) 1 Ford at p. 189.

due security[1] being given, subject, however, to such considerations as regard the age and occupation of the absent person and the perils to which he may have been exposed.[2] The whole matter is, however, in such cases, *semble*, left to the discretion of the judge.[3]

The malicious desertion of either spouse by the other is a good ground for divorce at the Cape,[4] but in considering whether desertion has been established, length of absence, though an ingredient in the case, is not essential.[5] Moreover, neither spouse is punishable, as for bigamy, if he or she reasonably and *bona fide* believed that his or her spouse was dead at the time of the subsequent marriage.[6] Whether such belief is reasonable and entertained in good faith, is a question for the jury, but, as a general rule, it may be broadly stated that such belief is neither unreasonable nor *mala fide* if the spouse has been absent for seven years or more, and, notwithstanding due inquiries, has not been heard of or from during that period.[7]

United States of America.—The length of absence that will give rise to the presumption of death varies in the different States.[8] In most of them, however, a person is presumed to be dead after an absence of seven successive years, without any intelligence from him by those who would be likely to hear from him.[9] The presumption of continued life, which the American law appears to sanction, then ceases. This period of seven years may, however, be shortened by proof of such facts and circumstances connected with the person whose life is the subject of inquiry as, submitted to the test of reason and experience, would force a conviction of death within a shorter period.[10] Moreover, it is not necessary to prove a party's absence from the United States in order to raise the presumption

[1] This security is required for the restitution of any property received under the liquidation in the event of the person presumed to be dead afterwards turning out to be alive (*Institutes of Cape Law*, vol. i. pp. 206-7).

[2] *Per* De Villiers C.J. in *In re Booysen, supra*; *Re Kannemeyer*, (1890) 7 S.C. 322; *In re Kirby*, (1899) 16 S.C. 245.

[3] *In re Booysen, supra*; and see *Ex parte Smit*, (1903) T.S. 12. The commentators upon the Dutch law show that great diversity existed as to the period of absence which would justify the liquidation of the estate of an absent person (*In re Booysen, supra*; *per* De Villiers C.J. at p. 189 of 1 Ford). According to the law of some places, seven years were sufficient, while according to others, sixteen and even thirty years were required (*ibid.*; and see Voet, *passim*).

[4] Voet, 24, 2, 9; cf. *Institutes of Cape Law* by Maasdorfs, vol. i. p. 86.

[5] *Per* Curiam in *Mostert* v. *Mostert*, (1855) 1 Searle at p. 131.

[6] *Per* De Villiers C.J. in *In re Booysen, supra*.

[7] *Ibid.*

[8] Stimson's *American Statute Law*, p. 340.

[9] *Ibid.*; Simonton's *Handbook of Practical Law*, p. 122; *Scott* v. *McNeall*, (1893) 154 U.S. 34. The New York City Civil Code provides that a person not heard from in seven years is dead (§ 1780, Art. 26). In some States death is presumed after an absence of three years, in others after two years or even one year, while fifteen years' absence is required in some States (Stimson's *American Statute Law*, p. 685).

[10] *American Digest*, Century Edition, vol. xv. p. 2479; *North-Western Life Insurance Co.* v. *Stevens*, (1895) 71 Fed. 258.

under consideration if for seven years he has been absent from the particular State of his residence without having been heard of.[1]

In many States, absence by a spouse without reasonable cause for a period of years amounts to such wilful desertion as will be a ground of divorce,[2] and, in some few States if either spouse is for five years absent and unheard of, or reported and believed to be dead, and the other marries again during the life-time of the absent spouse, the marriage is void only from the time a decree of Court is pronounced to that effect.[3] In the State of New York a marriage contracted after five years' absence of one spouse by the other, without knowledge that the absent spouse was alive within that time, is not bigamous.[4]

Contemporary Civil Codes.—The provisions contained in these Codes, with regard to the presumption of absence or death [5] in the case of untraceable persons, seem to be more or less independent of the Roman civil law, which, indeed, originally at all events, refused to presume either the life or death of a person,[6] though if it were once proved that a person had lived, he was held to be living until evidence of his death was produced.[7] Nor was there ever any presumption as to the time of death, which had always to be proved as a fact.[8] By the Roman civil law, a magistrate could always appoint

[1] *Newman* v. *Jenkins*, (1830) 10 Pick. 515.

[2] *American Digest*, Century Edition, vol. xvii. pp. 2132-3, and cases there cited.

[3] Stimson's *American Statute Law*, p. 667.

[4] *American Digest*, Century Edition, vol. vi. pp. 214-15.

[5] The object of a declaration of death or disappearance is to settle the rights of inheritance and the family relations between the person who has disappeared and his connections; the rights of inheritance in a double sense: (1) in so far as claims may be made upon the estate of the person who has disappeared; (2) in so far as he may himself have claims against another estate (Bar's *Private International Law*, 2nd ed. p. 291). Such a declaration or judgment must have extra-territorial effect as proof of a fact at all events (*ibid.* p. 294).

[6] Mackeldy's *Modern Civil Law*, s. 140; Rattigan's *Roman Law of Persons*, p. 93. In the case of absent persons it was originally only by custom that a presumption of death was introduced, where the absence continued during a certain period of time without any news being received of either the life or death of the absentee (Goudsmit's *Roman Law*, R. de Tracy Gould's edition, p. 46). As to whether the space of one hundred years, which in Roman law is sometimes designated the highest age of man (Mackeldy's *Modern Civil Law*, s. 140, note (c) p. 144), was ever regarded and treated as the limit of human life, so as to give rise to a general and legal presumption of death on its expiration, is somewhat doubtful (*ibid.*; Goudsmit's *Roman Law*, R. de Tracy Gould's edition, pp. 44, 47; see, however, Schuster's *Principles of Roman Civil Law*, p. 29; Taylor on *Evidence*, 10th ed. vol. i. p. 192), but, at all events, it seems to be certain that the absence of a person, for a much shorter period than one hundred years, afforded such presumption of his death as to enable his heir to take possession of the estate and to make a division of it, on giving adequate security to restore it if the party should be still alive (Burge's *Colonial and Foreign Laws*, vol. iv. p. 6).

[7] Mackeldy's *Modern Civil Law*, s. 140; Rattigan's *Roman Law of Persons*, p. 93. The consent of the head of a family to the marriage of any one under his power was dispensed with after three years had elapsed since his absence from his home and since he was last heard of (Dig. 23, 2, 10).

[8] Goudsmit's *Roman Law* (R. de Tracy Gould's edition), p. 47.

a curator to all persons under disability to manage their own business,[1] and, in like manner, an inability in this respect was eventually inferentially supposed to attach to an absentee whose whereabouts were not known, and an officer, termed *curator absentis*, was appointed, precedence for that office being accorded to the intestate's heirs, should such be capable, but if not, their tutors were to be preferred.[2]

In the case of the remarriage of supposed widows, some evidence of the death of the former husband was, *semble*, always required and regarded as necessary.[3]

Before referring to any specific Codes Civil, it may be as well to mention that most of those now in operation contain express provisions relative to absentees who cannot be traced, and prescribe what steps shall be taken in cases where a person possessed of property has disappeared for a specified period of time. These provisions seem to be, generally speaking, framed quite as much in the interest of the absentee as of his heirs and representatives, who, usually, in the first instance, merely obtain provisional possession —ultimately, however, maturing into definitive possession—entitling them, on giving security for due administration,[4] to administer the effects of the absentee, to whom, nevertheless, they remain, for a time at least, strictly accountable, in case of his reappearance, of the discovery of his whereabouts, or of tidings being received of or from him.[5] According to most of the existing Codes Civil, the length of a person's absence determines whether provisional or definitive measures shall be granted in respect of the absentee's property. The period of absence, however, varies somewhat in different countries, as also do the precise steps legally prescribed in the interest of the absentee and his heirs in such circumstances.[6] Moreover, the age of the absentee, as well as the length of the absence, are in most of the Codes taken into consideration in deciding whether his death or absence shall be presumed.[7]

France and Belgium.—These Codes[8] recognise three periods or degrees of absence,[9] namely (*a*) where any period of time, but *less* than four years, has elapsed since the disappearance of the absentee; (*b*) where the absence

[1] Colquhoun's *Summary of the Roman Civil Law*, vol. i. par. 774, pp. 604-5.

[2] *Justin Novell*, 117 Ch. 11; and see Rattigan's *Roman Law of Persons*, p. 93.

[3] Colquhoun's *Summary of the Roman Civil Law*, vol. i. par. 774, pp. 604-5.

[4] See by way of example Codes Civil Fr. and Bel. Arts. 121, 123, *post.*

[5] See Codes Civil Fr. and Bel. Arts. 125, 132.

[6] See *post, passim.*

[7] See *post.* Codes Civil Fr. and Bel. Art. 129; Germany, Art. 14; Austria, Art. 24; Port., Art. 80; Italy, Arts. 22, 26, 36; Spain, Art. 191; Lower Canada, Art. 98.

[8] The French and Belgian Codes Civil contain practically identical provisions on the subject of absence. Verbal variations of no real importance, however, occur in Arts. 116, 118, 123, and 126 of the Belgian Code.

[9] Codes Civil Fr. and Bel., Art. 112: "En droit, un individu est-il dit absent lorsqu'il a disparu de son domicile ou de sa résidence habituelle, et que son existence est devenue incertaine par suite de défaut de nouvelles depuis longtemps" (see Code Civil annoté par E. Fuzier-Herman, vol. i. p. 178). This form of absence must not be confounded with the *non-presence* referred to in Art. 840 of the Codes.

has extended to fully four years,[1] or, in the case of an absentee who has left behind him a power of attorney, after the lapse of ten years from the disappearance or last tidings respecting the absentee;[2] and (*c*), where the absence has continued for thirty years from the time when provisional possession of the absentee's property was granted by the Court, and one hundred years have elapsed from the birth of the absentee.[3] In the first period, absence is only *presumed* not *declared*,[4] and the sole measures sanctioned by the Court are for the protection of the absentee's property, by the appointment of an attorney, where the absentee has left no power of attorney behind him.[5] In the second period, the absence is not merely *presumed*, but *declared*,[6] and yet whatever may be the doubt of the absentee being alive, there is not even then considered to be sufficient ground for believing him to be dead.[7] Consequently the only measures legally sanctioned are for the protection of the absentee's interests, should he return, and that of his heirs if he be dead.[8] These measures consist mainly of a declaration of absence pronounced by the Court, at the instance of the absentee's heirs,[9] after one year has elapsed from the order of the Court directing an inquiry,[10] and followed by the giving of provisional possession of the absentee's property to his heirs.[11] In the third period, the absence having previously been declared, the Court may authorise definitive possession of the property of the absentee to be taken by the heirs, with a view to a division thereof amongst those entitled thereto.[12] Should the absentee, however, afterwards reappear, he is still entitled to recover his property in the condition in which it then is, and the price of what has been sold, or the property arising from the investment of such price.[13]

Should the absentee's spouse re-marry, such marriage can only be attacked by the absentee himself or by some person acting for him and armed with proof of his existence.[14]

Lower Canada.—The Code Civil of this Colony follows pretty closely the provisions of the French and Belgian Codes, in regard to the presumptions to which long absence gives rise,[15] and recognises, as they do,

[1] Codes Civil Fr. and Bel. Art. 115. [2] *Ibid.* Art. 121. [3] *Ibid.* Art. 129.

[4] It is to be noted that the French and Belgian Codes never presume the *death* of the absentee, even after the period of absence referred to in Art. 129, but merely sanction a declaration of absence, which, however, seems to pre-suppose death.

[5] Codes Civil Fr. and Bel. Art. 112. [6] *Ibid.* Arts. 115 *et seq.*

[7] Burge's *Colonial and Foreign Law*, vol. iv. p. 10. [8] *Ibid.*

[9] Codes Civil, Fr. and Bel. Art. 115. The Court will not pronounce a declaration of absence without paying due regard to the motives of the absence and to the causes which may have prevented news being received of the absentee (*ibid.* Art. 117).

[10] *Ibid.* Art. 119. [11] *Ibid.* Art. 120. [12] *Ibid.* Arts. 129, 130. [13] *Ibid.* Art. 132.

[14] *Ibid.* Art. 139. The Codes do not expressly provide for the case of an absentee, on his return, not attacking such a marriage.

[15] See *ante*, p. 263, for provisions of these Codes in regard to absence. By the Code of Lower Canada, an absentee is one who, having had a domicile in Lower Canada, has disappeared without any one having received intelligence of his existence (Art. 86).

three periods of absence. Thus, in the first period, and quite irrespective of the length of the absence (if less than four years), should it be necessary to provide for the administration of the property of an absentee who has no attorney, or whose attorney is unknown or refuses to act, the Code permits a curator to be appointed.[1] The second period of absence, however, which justifies the giving of provisional possession of the absentee's property to his heirs is five years, and therefore one year longer than is required by the French and Belgian Codes,[2] though where there are strong reasons for supposing that the absentee is dead, provisional possession may be obtained before the expiration of such period of five years.[3] After thirty years' absence, or if one hundred years have elapsed since the absentee's birth, he is reputed to be dead[4] from the time of his disappearance, or from the latest intelligence received,[5] and should he reappear afterwards, he recovers his property in the condition in which it then is,[6] as is also provided by the French and Belgian Codes, in Art. 132 thereof.[7]

Mauritius.—In this Colony the French Code Civil, as modified from time to time by various ordinances, is maintained in force by the eighth Article of the Treaty of Capitulation of December 3, 1810.[8] Consequently the provisions of that Code in regard to absentees, already set forth,[9] seem to apply to Mauritius, so far as they do not conflict with the Curatelle Ordinance (No. 9 of 1890) on this subject. It is unnecessary to state, in detail, the provisions of this Ordinance, which are of considerable length. Briefly, they provide as follows: Any person absent from and not legally represented in the Colony who is entitled to property therein is, for the purposes of the Ordinance, an absentee.[10] Whenever an official, termed the Curator of Vacant Estates, has reason to believe that there exists in the Colony any property or right belonging to or accruing to an absentee, such Curator shall apply to a judge for an order vesting such property or right in him,[11] which order is granted *ex parte*,[12] and has to be notified by advertisement in two daily papers.[13] The vesting order, which, should the Curator fail to apply for it, may be obtained at the instance of a third party,[14] affects all rights and property of the absentee in the Colony.[15] A divesting order may afterwards be made on the application of any person entitled to represent the absentee for whom the Curator is acting,[16] or on the application of the Curator himself.[17]

With regard to the re-marriage of the spouse of an absentee, if the

[1] Code Civil of Lower Canada, Art. 87. [2] *Ibid.* Art. 93. [3] *Ibid.* Art. 94.
[4] As already stated, the French and Belgian Codes do not enable the absentee's death to be presumed (see *ante*, p. 264).
[5] Code Civil of Lower Canada, Art. 98. [6] *Ibid.* Art. 101. [7] *Ante*, p. 264.
[8] Burge's *Colonial and Foreign Law*, new ed. vol. i. pp. 199 *et seq.* [9] *Ante*, pp. 263-4.
[10] Curatelle Ordinance (No. 9 of 1890), Art. 13. [11] *Ibid.* Art. 15 (1).
[12] *Ibid.* Art. 15 (2). [13] *Ibid.* Art. 15 (3). [14] *Ibid.* Art. 16.
[15] *Ibid.* Art. 17. [16] *Ibid.* Art. 40. [17] *Ibid.* Art. 41.

husband has left the wife, or the wife her husband, and has been absent during ten consecutive years without news or information as to whether the absentee be alive or dead, it is lawful for the Court, upon proof of the facts, and of the fact that full and sufficient inquiry has been made, to decree and order the marriage to be dissolved.[1]

St. Lucia.—The Code Civil of this Colony contains provisions with regard to absentees which are, in some respects, similar to those comprised by the French Code Civil.[2] An absentee is therein described as one who, having had a domicile in the Colony, has disappeared and whose existence is unknown.[3] Should such a one have left no attorney to represent him, his property, etc., is administered by a Colonial Curator or Trustee,[4] but at the instance of those interested, or if there be no minors amongst them, at the instance of a creditor, instead of a Colonial Curator, a Curator may be appointed[5] whose powers, however, extend to the act of administration only.[6] After five years' absence, and before such delay, if there be strong presumptions that the absentee is dead,[7] the absentee's presumptive heirs may take possession of his property by authority of the Court,[8] which, however, must take into account the reasons of the absence and the causes which have prevented the receipt of intelligence of or from the absentee.[9] Provisional possession is a trust and makes those who obtain it liable to account to the absentee or to his heirs and legal representatives.[10] After thirty years' absence, or one hundred years from his birth, provisional possession becomes absolute.[11] If the absentee reappear, or if his existence be proved during the time of the provisional possession, the judgment granting it ceases to have any effect.[12] After thirty years' absence or one hundred years from the birth of the absentee, should the absentee reappear, he recovers his property in the condition in which it then is,[13] and within thirty years from the time at which possession becomes absolute, children and direct descendants of the absentee may claim restoration of his property in the state in which it then is.[14]

The presumption of death arising from absence, whatever be its duration, does not apply in the case of marriage, and neither the husband nor wife of the absent spouse can marry without producing proof of the death of the absent spouse.[15]

Germany.—The subject of absence and presumption of death is governed by the German Civil Code of August 18, 1896, which, on this subject, adopts a combination of the systems of Roman law and English law.[16]

[1] Ordinance No. 12 of 1872.
[2] See *ante*, French Code Civil.
[3] Code Civil, St. Lucia, Art. 52.
[4] *Ibid.* Art. 53.
[5] *Ibid.* Art. 54.
[6] *Ibid.* Art. 57.
[7] *Ibid.* Art. 60.
[8] *Ibid.* Art. 59.
[9] *Ibid.* Art. 61.
[10] *Ibid.* Art. 62.
[11] *Ibid.* Art. 64.
[12] *Ibid.* Art. 66.
[13] *Ibid.* Art. 67.
[14] *Ibid.* Art. 68.
[15] *Ibid.* Art. 74.
[16] Schuster's *Principles of German Civil Law*, p. 30.

It permits an adjudication of death to be made if for ten years no news has been received that the absentee is alive.[1] Such adjudication cannot, however, be made before the close of the year in which the absentee would have completed his thirty-first year.[2] In the case, however, of a missing person who would have completed his seventieth year, he may be declared dead if for five years no news has been received that he is alive.[3] Moreover, one who has been in peril of life, under circumstances mentioned in Arts. 15 and 16 of the Code,[4] may be declared dead after much shorter periods of absence than those already stated, while one who has been in peril of his life under circumstances other than those mentioned in the said last-mentioned articles, and who has not since been heard from, may be declared dead upon the expiration of three years after the event which caused the peril of life aforesaid.[5] The declaration of death establishes the presumption that the person who cannot be traced and has disappeared died at the time set forth in the adjudication which contains the declaration of death, and if the day of death only has been fixed, the end of that day is taken to be the time of death,[6] and until the adjudication of death has been made, the life of the person who has disappeared is presumed to continue up to that point of time.[7]

If a spouse, after the other spouse has been declared dead, contracts a new marriage, the new marriage is not void because the spouse declared to be dead is still living, unless both spouses at the time of the marriage know that such spouse has survived the declaration of death.[8] Upon the consummation of the new marriage, the former marriage is dissolved, and remains dissolved even if the declaration of death is revoked in consequence of an action contesting the marriage.[9]

Austria.—By the General Civil Code of 1811, which applies to all the German Hereditary Provinces of the Austrian Monarchy, it is provided[10] that if there should be a doubt as to whether an absent person or a missing

[1] The German Civil Code, 1896, Art. 14.

[2] *Ibid.* This provision does not, *semble*, apply to the cases provided for by Arts. 15 to 17 of the Code, *infra* (The German Civil Code, annotated by Chung Hui Wang, note (p) p. 3).

[3] Art. 14.

[4] The excepted cases referred to in which death will be presumed and declared after shorter periods are (1) where members of an armed force (whether of the Empire or of a foreign Power makes no difference) who have served in war have been missed during the war. These may be declared dead after the conclusion of peace (Art. 15); (2) where any person was on board a ship lost, or presumed to be lost, at sea (Art. 16).

[5] Art. 17.

[6] The German Civil Code, 1896, Art. 18. By German law, a person is presumed to have lived up to the moment in which he is presumed to have died (Schuster's *Principles of German Civil Law*, p. 31).

[7] *Ibid.* Art. 19. In an ordinary case the time of death is presumed to be the earliest moment at which the declaration of death would have been admissible (Schuster's *Principles of German Civil Law*, p. 30).

[8] Art. 1348.

[9] *Ibid.*; and see Arts. 1349-52.

[10] Art. 24. Code translated by Joseph M. Chevalier de Winiwarter (Vienna, 1866).

person is still living or not, his death is only to be supposed under the following circumstances:

(1) When a period of eighty years has elapsed since his birth, and his place of residence has remained unknown for ten years.

(2) Without regard to the time which has elapsed since his birth, if his place of residence has remained unknown for fully thirty years.

(3) When he has been severely wounded in war, or when he was on board a ship at the time it was shipwrecked, or otherwise in imminent danger of his life, and when he has been missing for three years from that time.[1]

In all these cases the declaration of death can be applied for and granted under the precautions prescribed by the Code.[2] The day on which a declaration of death has obtained its validity at law is considered as the legal day of the death of a person who is absent.[3] Such declaration, however, does not exclude the proof that the absent person has died, sooner or later, or that he is still living, and, if such proof be established, the person who on the ground of the judicial declaration of death has taken possession of a property is to be treated like another *bona fide* possessor.[4]

The mere lapse of the time fixed by the Code for declaration of death of an absent spouse does not authorise the other party to consider the marriage as dissolved, and to proceed to another marriage.[5] If, however, this absence is accompanied by such circumstances as leave no reason to doubt that the absent person is dead, the judicial declaration that the absent person may be considered dead and the marriage dissolved may be applied for to the privileged Court of the district in which the deserted spouse resides.[6]

Russia.—In the Baltic Provinces of Russia, a judgment of death in respect of an absent person who has not given tidings of his existence during a period of delay prescribed by the Baltic Code can be obtained.[7] Such a judgment produces the same results as a death certified upon direct evidence of the fact.[8]

Sweden.—The provisions of the Swedish Code Civil in regard to the presumption of death where a vacant possession occurs through long

[1] Art. 24.

[2] The tribunal to whom application is made for the judicial declaration of the death of a person who is absent has first of all to appoint a curator for the absentee, who is then summoned by an edict, the term of which is fixed for a year, with the addition that the tribunal, if he does not appear within this time, or if he does not inform the tribunal in another way of his existence, will proceed to the declaration of his death (Art. 777 of Austrian General Civil Code).

[3] Art. 278. [4] *Ibid.* [5] Art. 112.

[6] *Ibid.*; and see Arts. 113 and 114 as to procedure required to be adopted by the deserted spouse, before remarriage, indicating the precautions prescribed in such cases.

[7] Baltic Code Civil, Arts. 2582, 2583, cited at p. 440 of Lehr's *Elements de Droit Civil Russe.* [8] *Ibid.*

absence are very explicit, and not so complicated as those contained in some other Codes.[1] They provide that, in the case of a person who has disappeared without his abode being known, but who was known to have been alive during the last twenty years, a declaration of presumption of his decease may be obtained[2] after proper advertisements have been issued in the press.[3] Where, however, it is certain that the absentee was left gravely wounded in war, or was on board a shipwrecked vessel, and it is not known whether he was saved, death is presumed after five years since news of the absentee was last received,[4] and also where it is proved that the absentee, if alive, would be ninety years of age.[5]

Absence by itself of a husband is not in Sweden a cause of divorce unless it assumes the character of abandonment, that is to say, is without sufficient excuse, or amounts to malicious desertion.[6] Moreover, where the husband's residence is unknown, his wife after six years, if she has been well conducted, may be allowed to re-marry,[7] but should her husband afterwards reappear and give sufficient excuses for his absence, he may take back his wife.[8]

Holland.—The Dutch Code Civil defines what provisional measures shall, in the first instance, be taken in the case of the absence of a person whose whereabouts cannot be traced, to safeguard his property;[9] but postpones the declaration of presumption of death till after five years have elapsed since tidings of the absentee were last received.[10] After thirty years' absence from the day when death has been legally presumed, or if one hundred years have elapsed since the birth of the absentee, the distribution of his goods becomes definitive.[11]

After ten years since a malicious desertion (as distinguished from mere unexplained absence) by either spouse of the other took place, and after certain precautions in the interest of the deserting spouse have been observed, giving him or her an opportunity of disclosing his or her whereabouts and re-appearing, the deserted spouse may be authorised to re-marry,[12] in which case the other spouse may also contract a fresh marriage.[13]

Spain.—The Spanish Code Civil provisionally protects, in the first instance, an absentee's property quite irrespective of the length of his absence, as soon as his disappearance from home, leaving no address, has been ascertained.[14] It

[1] See *Les Codes Suédois*, par Raoul de la Grassière (published 1895), *passim*; Ordinance Royale of May 20, 1885, which supplies a gap in the Code.

[2] Swedish Code, Titre des Successions, chap. xv.; Ordinance Royale of May 20, 1885, Art. 1.

[3] Ordinance Royale, May 20, 1885, Art. 3.

[4] *Ibid.* Art. 2. [5] *Ibid.*

[6] Swedish Code Civil, Titre du Mariage, chap. xiii. Arts. 4, 6.

[7] *Ibid.* Art. 6. [8] *Ibid.* [9] Arts. 519 *et seq.*

[10] Art. 523. The Law of July 9, 1855, shortens the period mentioned in this Article for obtaining a declaration of presumption of death in certain cases, where persons have been exposed to and experienced special perils, such as shipwrecks, etc.

[11] Dutch Code Civil, Art. 540. [12] *Ibid.* Art. 549.

[13] *Ibid.* Art. 551. [14] Spanish Code Civil, Arts. 181-3.

permits a declaration of absence to be obtained, by certain prescribed persons,[1] after the expiration of two years without any tidings of the absentee, or after five years where he has left some one to administer his goods during his absence.[2] After thirty years' absence, however, or if ninety years have elapsed since the birth of the absentee, the judge, on the demand of persons interested, may declare the presumption of death,[3] which decree, however, is not executed till six months from the date of its publication in official journals, when the succession to the property of the absentee is opened.[4] But even after a declaration of presumption of death has been pronounced, the absentee, should he afterwards appear, is entitled to re-take his property, but only in its then state and condition.[5]

Portugal.—According to the Portuguese Code Civil a provisional administrator may be appointed, if necessary, whenever a person has disappeared from his place of domicile or residence,[6] and after four years' absence without any tidings of him, or after ten years where he has left a properly appointed attorney to act for him, definitive possession may be obtained,[7] provided certain prescribed precautions are taken.[8] After twenty years' absence, or after ninety-five years have elapsed since the absentee's birth, his goods, etc., can only be recovered by those entitled thereto in the state in which they then may be.[9]

Italy.—The Italian Code Civil, on the subject of absence and the presumptions it gives rise to, contains provisions similar in many respects to those of the French and Belgian Codes on the same subject.[10] It defines an absentee as one who has ceased to appear in the place of his last domicile or last residence, and of whom there is no news, and presumes his absence.[11] So long as the absence is merely presumed, some person is appointed to take all measures necessary to preserve the absentee's patrimony.[12] After three continuous years of presumed absence, or after six years if the absentee has left an attorney behind him to represent him, a declaration of absence may be pronounced,[13] and his property sent into temporary possession[14]—during the duration of which, should the absentee return, or there be proof forthcoming of his existence, he becomes entitled to the restoration of his property, together with the revenues produced by it.[15] After thirty years, since temporary possession was obtained, or if one hundred years have elapsed since the birth of the absentee and it is three years at least since there was any news of him, a decree authorising definitive possession to be taken may be pronounced.[16] Such a decree may also be obtained when the one hundred years since the absentee's

[1] Spanish Code Civil, Art. 185. [2] *Ibid.* Art. 184.
[3] *Ibid.* Art. 191. [4] *Ibid.* Art. 192. [5] *Ibid.* Art. 194.
[6] Portuguese Code Civil, Art. 55. It also provides, by special articles (82 to 96, inclusive), for administration of property of a married absentee.
[7] *Ibid.* Art. 64. [8] *Ibid.* Arts. 65 *et seq.* [9] *Ibid.* Art. 80.
[10] See *ante*, pp. 263 4. [11] Italian Code Civil, Art. 20. [12] *Ibid.* Art. 21.
[13] *Ibid.* ; see Arts. 22-5. [14] *Ibid.* ; see Arts. 26 *et seq.*
[15] *Ibid.* Art. 33 ; see also Art. 31. [16] *Ibid.* Art. 36.

birth expired before the declaration of absence was pronounced, or after such declaration, but before the decree granting temporary possession of the absentee's property was granted, though not until successful application has been made for a declaration of absence.[1] After definitive possession has been obtained, the absentee can only recover his property in the state in which he finds it at the time of his re-appearance.[2]

A marriage contracted during the absence of one spouse by the other cannot be attacked so long as the absence continues.[3]

II. The Presumption of Survivorship amongst Persons who have perished in a Common Disaster.[4]

This presumption is of great practical importance, and is frequently invoked where the persons who have perished through a common calamity are either entitled to succeed each other or where one of them derives some right in the property of the other in the event of survivorship.[5] The cases to which the presumption applies are often of considerable difficulty, especially when, from their circumstances, the order of time in which the deaths of the commorientes occurred cannot be directly proved.[6]

In England.[7]—The English law, which formerly did not appear to have adopted any decided rule on this subject,[8] now regards it from first to last as one of fact, depending wholly on evidence, and should the survivorship of any one person not be proved, treats the question as a matter incapable of solution,[9] and always casts the *onus probandi* on the person asserting, affirmatively, the survivorship of any one of the commorientes.[10] Thus, though it has been

[1] Italian Code Civil, Art. 38. [2] *Ibid.* Art. 39.

[3] *Ibid.* Art 113. A marriage contracted in good faith, though afterwards declared null and void, produces like civil consequences, both in regard to the contracting parties and their children acknowledged before such marriage was annulled, as does any other marriage (*ibid.* Art. 116).

[4] Such persons are, for the sake of brevity, termed *commorientes*, *i.e.* persons dying together. The subject of survivorships amongst them frequently arises in probate cases (Tristram & Coote's *Probate Practice*, 14th ed. pp. 195 *et seq.*; and see *In the Goods of Beynon*, 1901, p. 141; *In the Goods of Ewart*, 1859, 1 Sw. & Tr. 258), and also in equity cases (see *In re Tindall*, 1861, 30 Beav. 151; *Ommany* v. *Stilwell*, 1856, 23 Beav. 328; *Dowley* v. *Winfield*, 1844, 14 Sim. 277; *In re Walker*, 1871, L.R. 7 Ch. 120; *Wollaston* v. *Berkeley*, 1876, 2 Ch.D. 213; *Barnett* v. *Tugwell*, 1862, 31 Beav. 232; *In re Elliott—Elliott* v. *Smith*, 1882, 22 Ch.D. 236).

[5] See McClaren's *Wills and Successions*, 3rd ed. vol. i. p. 63.

[6] Burge's *Commentaries on Colonial and Foreign Laws*, vol. iv. p. 11; and see McClaren's *Wills and Successions*, 3rd ed., vol. i. p. 63.

[7] Includes Ireland. [8] Best on *Presumptions of Law and Fact*, p. 193.

[9] *In the Goods of Alston*, (1892) P. 142; *Underwood* v. *Wing*, (1854) 4 De G. M. & G. 633, 656; *Barnett* v. *Tugwell*, *supra*; *Scatterthwaite* v. *Powell*, (1834) 1 Curt. 706; *Robert* v. *Murray*, (1834) 1 Curt. 596; *In the Goods of Ewart*, *supra*; *In the Goods of Wainwright*, (1859) 1 Sw. & Tr. 257.

[10] *Wing* v. *Angrave*, (1860) 8 H.L. 133; and see *Taylor* v. *Diplock*, (1815) 2 Phill. 261; *In re Green's Settlement*, (1865) L.R. 1 Eq. 288; *Mason* v. *Mason*, (1816) 1 Mer. 308.

laid down as being hardly within the range of imagination that two persons should cease to breathe at the same time,[1] there is no presumption of law on the subject.[2] Moreover, the age or sex of the deceased persons does not of itself suffice to solve the riddle of survivorship.[3] Where, however, two persons die of the same stroke or accident, and there are no special circumstances in evidence from which it can be presumed that one died before the other, the law will draw that presumption from general circumstances, such as the comparative health, strength, age, or experience of the parties.[4] It recognises, however, no artificial presumption in cases of this nature, but merely leaves the real or superior strength of one of the parties perishing by a common calamity to its natural weight, as a circumstance proper to be taken into consideration by the tribunal called upon to determine the question of survivorship, but which circumstance, standing alone, is insufficient to shift the burden of proof[5] if, therefore, there is no further evidence before the Court than the assumption that from age or sex one party struggled longer against their common death than his companion, no presumption of survivorship will be raised.[6]

In Scotland.—The series of subtle presumptions of fact, of a more or less arbitrary kind, sanctioned by the civil law for the purpose of determining which of two or more commorientes died last have not, it seems,

[1] *Underwood* v. *Wing*, (1855) 24 L.J. Ch. 293. In the Ecclesiastical Courts the presumption adopted was, *semble*, that all the commorientes perished together and could not therefore transmit rights one to the other (Phillips & Arnold on *Evidence*, vol. i. pp. 478, 479; *Taylor* v. *Diplock*, 1815, 2 Phill. Eccl. 261). The German Code of 1896 also adopts this view (see *post*).

[2] *Wing* v. *Angrave*, *supra*; *Sillick* v. *Booth*, (1841) 6 Jur. 142, 144; Best on *Presumptions of Law and Fact*, p. 202; but see *per* Sir William Wynn in *Wright* v. *Sarmuda* (or *Wright* v. *Netherwood*), 1793, cited in a note to *Taylor* v. *Diplock*, (1815) 2 Phill., pp. 266, 267.

[3] *Wing* v. *Angrave*, *supra*. It will be seen, *post*, that some of the contemporary Codes Civil determine the fact of survivorship upon certain arbitrary presumptions depending on the age and sex of the commorientes. There are many instances in which principles of law have been adopted from the civilians by our English Courts of Justice, but none, *semble*, in which they have adopted presumptions of fact from the rules of the civil law (*per* Grant M.R. in *Mason* v. *Mason*, 1816, 1 Mer. 308, at p. 312).

[4] *Sillick* v. *Booth*, (1841) 1 You. & Coll. at pp. 121, 126; and see *Broughton* v. *Randall*, (1596) Cro. Eliz. 502; Best on *Presumptions of Law and Fact*, p. 193; Phillips & Arnold on *Evidence*, vol. i. pp. 478, 479.

[5] Best on *Presumptions of Law and Fact*, p. 201.

[6] *Ibid.* p. 202. Where a husband and wife, having made mutual wills, each appointing the other sole executor and universal legatee, subsequently went to sea in the same ship, which never arrived at its destination, and was presumed to have been lost with all hands, it was held that there was no presumption of law as to which of the two, the husband or the wife, died first (*In the Goods of Alston*, 1892, P. 142; and see *Barnett* v. *Tugwell*, 1862, 31 Beav. 232; *In the Goods of Johnson Brothers*, 1898, 78 L.T. 85; *Wollaston* v. *Berkeley*, 1876, 2 Ch.D. 213). The only safe form of will for a married pair having identical testamentary wishes, and who are anxious to provide for the contingency of their deaths unexpectedly occurring by the same cause, appears to be to devise to a trustee, in trust, first, to accumulate the income for six months, next to transfer the estate to the wife (or husband) *if living at the expiration of the six months*, and next, if not then appearing to be living, to the desired secondary devisees (see Wigmore on *Evidence*, vol. iv. p. 2533).

been adopted in Scotland,[1] where, as in England, if satisfactory evidence of survivance cannot be obtained, neither, or no one of them, is held to have outlived the other.[2]

India.—By the Indian Evidence Act, 1872,[3] the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business in relation to the facts of the particular case.[4] This, however, does not entitle the Court to presume that any one of several commorientes survived the others on the ground of age, sex, or state of health, but, as in England, each case must be determined upon its own peculiar facts and circumstances, so that, in the absence of any evidence on the subject, the question of survivorship must be regarded as unascertainable, and in such cases is determined as if the death of all had occurred simultaneously.[5]

Cape of Good Hope.—The Roman-Dutch law[6] on the subject of survivorship amongst commorientes appears to be in accord with the Roman civil law—that is to say, in cases of succession *ab intestato*, the legal presumption of survivorship is founded upon the considerations and circumstances of age, sex, and physical strength,[7] while in cases of testate successions the claimant must as a rule, prove his title to that which he claims.[8]

United States of America.—In most of the States there appears to be no presumption from age, sex, or strength for determining questions of survivorship amongst those perishing by the same calamity, the doctrine of the civil law in regard thereto not finding a place, either as part of the common law or as an enactment of the legislative authority.[9] Nor does

[1] McClaren's *Wills and Successions*, 3rd ed. vol. i. pp. 67, 68; Erskine's *Principles of the Law of Scotland*, 20th ed. p. 467. The rules of the civil law are only binding in Scotland, in relation to new questions, in so far as they are reasonable, and in the matter of survivorship amongst commorientes the Court would most probably disregard the special presumptions of fact and follow the English rule that proof of the fact of survivance is incumbent on the party making the allegation (McClaren's *Wills and Successions*, 3rd ed. vol. i. at p. 68).

[2] Bell's *Principles of the Law of Scotland*, 10th ed. par. 1640; Erskine's *Principles of the Law of Scotland*, 20th ed. p. 467.

[3] Act No. I. of 1872. [4] S. 114.

[5] *The Law of Evidence applicable to British India*, by Ameer Ali & Woodroffe, 4th ed. pp. 608, 609.

[6] This law is practically the Roman law gradually adapted to the growing needs of a modern community (Manfred Nathan's *Common Law of South Africa*, vol. i. p. v). In matters for which it does not provide, the English law is invoked for decision, and hitherto the two systems have not clashed (*ibid.* p. vi).

[7] Manfred Nathan's *Common Law of South Africa*, vol. iii. par. 1927, pp. 1943, 1944.

[8] *Ibid.*

[9] See *American Digest*, Century Edition, vol. xv. pp. 2491 *et seq.*; Greenleaf's *Law of Evidence*, 13th ed. vol. i. pars. 29, 30; *Smith* v. *Croom*, (1857) 7 Fla. 81. In California and Louisiana, where there are no circumstances of fact available, survivorship is made to depend on age or sex (Stimson's *American Statute Law*, p. 344) in much the same way as is prescribed by the French and Belgian Codes (see *post*, p. 275).

there seem to be any presumption that all died at the same moment, but the fact of survivorship, like every other fact, has to be proved by the party asserting it.[1] However, where the calamity, though common to all, consists of a series of successive events separated from each other in point of time and character, and each likely to produce death upon the several victims according to the degree of exposure to it, the difference of age, sex, and physical strength becomes a matter of evidence and may be considered.[2]

Contemporary Civil Codes.—The Roman civil law had certain laws as to the order in which several commorientes were presumed to have died,[3] which, nevertheless, were subject to many exceptions. It, however, rather favoured the person in possession of property, or the person that did not require to invoke the aid of the law,[4] and presumed that one of several commorientes survived another only in cases of succession between parents and children, when it adopted that presumption which was most favourable to those who would succeed according to the course of nature.[5] Thus a child above the age of puberty was presumed to have survived the parent when both perished in the same disaster,[6] while, in like circumstances, one under that age was presumed to die first,[7] and also one who had only just attained puberty.[8] So a son was presumed to have survived his father where both were killed in battle.[9] Save in such cases, however, if there was no evidence which of two or more persons died first, there was no legal presumption that one died before the other.[10]

Though the French and Belgian Codes have largely adopted the doctrines of the Roman civil law in regard to survivance amongst commorientes, making the fact depend upon arbitrary assumptions as to age and sex, most of the Codes have, it will be seen, wisely rejected these subtleties and treat the question as being one of fact, to be decided by evidence alone.[11]

[1] *American Digest*, Century Edition, vol. xv. pp. 2491 *et seq.* and cases there cited; but see *Walton & Co.* v. *Burchel*, (1907) Tenn. 121.

[2] *Smith* v. *Croom*, *supra.*

[3] Schuster's *Principles of German Civil Law*, p. 31.

[4] Hunter's *Roman Law*, 3rd ed. p. 928.

[5] Burge's *Colonial and Foreign Law*, vol. iv. pp. 12 *et seq.*

[6] D. 34, 5, 22. The reason for regarding the son as having survived his father was not due to any abstract idea of the probability of a son being the stronger of the two (Hunter's *Roman Law*, 3rd ed. p. 929), for, when the father was a freedman, and his patron was therefore entitled to succeed in default of issue, the presumption was reversed, and it was held that the father survived the son, in order that the rights of the patron might be secured (D. 34, 5, 23).

[7] D. 35, 5, 23.

[8] Burge's *Colonial and Foreign Law*, vol. iv. p. 13.

[9] D. 34, 5, 9, 1. Where father and son were shipwrecked, the one who was shown to have been last seen was presumed to have lived the longer (D. 35, 5, 3).

[10] D. 34, 5, 18 pr.

[11] See Lehr's *Eléments de Droit Civil Russe*, p. 449; Phillips & Arnold on *Evidence*, vol. i. pp. 478, 479.

France and Belgium.—The Codes Civil of these two countries[1] contain various highly technical provisions, largely borrowed from the Roman civil law, on the subject of survivorship amongst commorientes, whereby the presumption under consideration is determined by the circumstances of fact in each case, and, in default thereof, by the force of age or sex.[2] These provisions are, briefly, as follows, namely where several persons respectively called to the succession of each other perish by one and the same accident, so that it is impossible to ascertain which died first, the presumption of survivorship is determined by circumstances, and, in their absence, by the considerations of age and sex, conformably to the following rules:[3]

(*a*) Where those who perished together were under fifteen, the eldest is supposed to have survived;

(*b*) If they were all above the age of sixty, the youngest is presumed to have survived;

(*c*) If some were under fifteen, and others over sixty, the presumption of survivorship is in favour of the former;[4]

(*d*) If those who perished together were all between the full ages of fifteen and sixty, and of different sexes, the male is always presumed to have survived, if the ages are equal or the difference of age does not exceed one year, while if they were of the same sex, the order of nature is followed, according to which the youngest is presumed to have survived.[5]

Lower Canada.—The articles of the Code Civil of Lower Canada are almost identical with those of France and Belgium on the subject of survivorship amongst commorientes.[6] Where, however, some of the commorientes were under fifteen or over sixty years of age, *and the others in the intermediate state*, the Canadian Code provides that the presumption of survivorship is in favour of the latter.[7]

[1] The articles of the French and Belgian Codes Civil are substantially identical on the subject under consideration.

[2] These provisions only apply to intestacies, and not to wills, and where the victims have perished by the same calamity, and not, therefore, where several people living in the same house are successively assassinated by the same person (Code Civil annoté par E. Fuzier-Herman, vol. ii. p. 26). Moreover, while they apply to cases where two persons who have died in the same event were respectively called to the succession, the one from the other, they do not govern a case where only one of the commorientes was *successible de l'autre* (*ibid.* p. 25). Nor do they apply to gifts to spouses subject to the condition of surviving the donor, nor to unilateral gifts (*ibid.* p. 26). They do, however, apply to heirs and also to all other persons interested (*ibid.*).

[3] Codes Civil Fr. & Bel. Art. 720.

[4] *Ibid.* Art. 721.

[5] *Ibid.* Art. 722, and see Arts. 1350 *et seq.*

[6] Code Civil of Lower Canada, Arts. 603-5 (inclusive).

[7] *Ibid.* Art. 604. The words in italics are not found in the French or Belgian Code Civil, Art. 721.

Mauritius.—The provisions of the French Code Civil on the subject of survivorship amongst commorientes seem to apply to this Colony, saving so far as they may have been altered or modified by Orders-in-Council.[1]

Germany.—By the Code Civil of 1896 it is provided that if several persons have perished in a common disaster it is presumed that they died simultaneously.[2] The effect of this provision is that neither of two persons perishing together by the same calamity can become entitled to any right in the estate of the other as his survivor.[3]

Austria.—In cases of doubt as to which of two or several deceased persons died first, he who maintains the previous death of the one or the other must prove his assertion; if he cannot do that, they will all be considered as having died at the same time, and there can then be no question of transferring the rights of the one to the other.[4]

Russia.—It is doubtful whether there is any express legal provision dealing with the question of survivorship among commorientes,[5] though, *semble*, the provisions on this subject contained in the French Code Civil were at one time in full force and vigour in Poland.[6] In the Baltic Provinces of Russia, where two persons perish by the same calamity, they are supposed to have died simultaneously,[7] except in the case of an ascendant and his descendant, when it is presumed that the latter, if a minor, died first, but if of age, that he survived the ascendant.[8]

Sweden.—There does not seem to be any express provision in the Code Civil of this country as to survivorship amongst commorientes,[9] though it is thereby provided that where there is no evidence of survivorship, the inheritance of each person passes to its nearest relations.[10]

Holland.—The Dutch Code Civil is silent on the subject under consideration.

Spain.—The Spanish Code Civil does not concern itself with the subject of commorientes.

Portugal.—The Code Civil of this country provides that if the *de cujus*,[11] his heirs and his legatees have perished in the same disaster, or have died on

[1] See *ante*, p. 265. The Curatelle Ordinance (No. 9 of 1890), which, as already stated (*ante*, p. 265), applies to the presumption of death in case of absentees, does not seem to deal with *survie* of persons perishing in the same disaster.

[2] Art. 20.

[3] Schuster's *Principles of the German Civil Law*, p. 31.

[4] Austrian Code Civil, Art. 25.

[5] Lehr's *Eléments de Droit Civil Russe*, p. 449.

[6] *Ibid.*

[7] Lehr's *Eléments de Droit Civil Russe*, p. 449; and see Code Baltique, Art. 2584. Even reduced to these limits this somewhat arbitrary presumption seems not to be exempt from criticism (Lehr's *Eléments*, etc., p. 449).

[8] *Ibid.*; and see Code Baltique, Art. 2585.

[9] See Code Suédois, p. 31.

[10] Swedish Code, Title "Successions," chap. iv. Arts. 1–3.

[11] *I.e. De cujus successione agitur* (he whose succession is in question).

the same day, and it is impossible to decide or ascertain which died first, they must be considered as having died at the same time, and there is then no room between them for the transmission of succession or legacies.[1]

Italy.—The Italian Code Civil does not seem to contain any articles dealing with survivorship amongst persons who perish in a common disaster.[2]

[1] Portuguese Code Civil, Art. 1738.

[2] See *Code Civil Italien*, par Henri Prudhomme, Introduction, p. xliii.

THE HAGUE CONFERENCE ON BILLS OF EXCHANGE.[1]

[*Contributed by* Sir Mackenzie Chalmers, K.C.B., K.C.S.I.]

The International Conference on the unification of the laws relating to bills of exchange, held at the Hague in June and July last, makes a new and hopeful departure in private international law. If there is one thing more than another that facilitates international commerce it is uniformity of commercial laws, and this principle applies perhaps in a greater degree to bills of exchange than to any other mercantile instrument or transaction. Though cable transfers are superseding bills in certain limited branches of trade, bills of exchange are still the main international currency, and their usefulness as currency largely depends on their uniform treatment by the laws of the different countries through which they are negotiated. No fitter subject could have been chosen for the new experiment.

The Conference was convened by the Netherlands Government, at the instance of Germany and Italy, and was attended by accredited delegates from thirty-five nations, some of them having full powers while others had more or less limited instructions (Blue-Book, pp. 1 and 26). Much good preliminary work has been done by private associations, such as the Association of Private International Law, but I think this is the first occasion on which the governments of all the great mercantile Powers have combined officially to secure the unification of an important branch of commercial law.

The Conference was an interesting one. It was not composed of "jurists," who, according to Lord Bramwell, are worthy persons knowing a little about the laws of all countries except their own. The delegates included merchants, bankers, practising lawyers, judges, ministers of state, and diplomatic representatives. To take, as an example, bankers, who perhaps know as well as any one where the bills of exchange shoe pinches. England was represented by Mr. F. Huth Jackson, a director of the Bank of England and president of the Institute of Bankers. The United States sent Mr. C. A. Conant, a New York banker and a well-known writer on banking matters. The German delegation included M. Fischel, a partner in the great Berlin bank of Mendelssohn & Co.; the French delegation included M. Picard, the general secretary

[1] See Foreign Office Blue-Book, "Correspondence relating to the Conference on Bills of Exchange," October 1910. [Cd. 5224.]

of the Bank of France; and the Austrian delegation included M. Hammerschlag, the manager of the Imperial Credit Society of Vienna.[1] The Conference lasted five weeks and sat continuously. The language used throughout was French, and full discussion was no doubt handicapped by the fact that only three out of the thirty-five nations represented (viz. France, Belgium, and Switzerland) were speaking their own tongue. But where so many tongues were collected together, any other rule would have been impossible.

The Questionnaire (Blue-Book, p. 4), which was circulated three months before the Conference met, raised eighty-nine points for discussion, and in the course of the Conference a good many more were raised. Some questions were debated at considerable length, while others, and not always the least important ones, were sometimes perfunctorily and inadequately discussed. For example the German rule that the holder of a bill, who claims through a forged indorsement, gets a good title, if he takes the bill in good faith, and the indorsements appear to be in order, was passed without discussion, except for the dissent of England and the United States. The English rule that the duties of the holder, as to presentment, protest, and notice of dishonour, are not absolute duties, but duties of reasonable diligence, found no defenders except ourselves.

The instructions to the English delegates were precise:

> As a general rule the British delegates will not hold out any hope that English rules of law are likely to be substantially modified and brought into conformity with continental rules, particularly in cases where the English rule prevails, not only in the United Kingdom, but also throughout the English-speaking world. . . . There are, nevertheless, certain points on which the English law is doubtful, or where there are points of divergence between the different English-speaking communities. In such cases it would evidently be desirable if a uniform law could be arrived at, and the uniformity of the rule is probably of more importance than the nature of the rule itself (Blue-Book, p. 20).

Throughout the Conference the delegates from England and the United States took the same line, and worked harmoniously together. The Anglo-American position is this: For practical purposes we have now got a uniform law of bills of exchange throughout the whole of the English-speaking communities. The Bills of Exchange Act, 1882, has been adopted, with or without small variations, by all our important colonies. The Indian Negotiable Instruments Act, though drafted on a different plan from the English Act, accords with it in substance; and if the Indian rule differs from the English rule in any respect, it is due to the accidents of drafting, and not to intentional divergence. In the United States the Federal legislature has no jurisdiction over bills of exchange. But some years ago the Commission on Uniform Laws drew up a model law of negotiable instruments, and this model law has now been enacted by the legislatures of thirty-five states and

[1] See Blue-Book, p. 115, for list of delegates and their qualifications.

in four territories (Blue-Book, p. 29). The American Negotiable Instruments Law differs in arrangement from the English Act, but accords with it in principle, and in many cases uses identical words. The most important point in which the Anglo-American laws diverge is the maturity of bills payable otherwise than on demand. Nearly all the states in the United States and some of the English colonies, following the continental lead and the dictates of convenience, have abolished days of grace. The rule that when a bill falls due on a common law *dies non* it is payable on the preceding day, while if it falls due on a bank holiday it is payable on the succeeding business day, is an eccentricity peculiar to the United Kingdom, and the sooner it is altered the better. The English delegates had no hesitation in recommending that days of grace should be abolished, and that when a bill falls due on a non-business day it should in all cases be payable on the next succeeding business day (Blue-Book, pp. 78 and 81). The fact that we have now got a uniform system throughout the English-speaking world makes us very loth to consider changes in our law, even though they may not be undesirable in themselves. Apart from the dislocation of business that follows from changing an old and well-known rule, we dislocate the whole Anglo-American system. If, for example, England or one of the states of the United States adopts some continental rule (*e.g.* the requirement that every dishonoured bill and note should be protested), the uniformity of the Anglo-American system is broken up until some fifty to sixty legislatures have agreed in approving the change. But an International Conference can only proceed on the principle of give and take. The nations which have nothing to give have rather to stand aside from the action of the piece, and take the part of the chorus in a Greek play. We could only argue in favour of our rules on abstract principles of convenience.

From the Anglo-American point of view the procedure adopted at the Conference was unfortunate. When questions were raised on which opinions differed, divisions were taken on the principle of "one nation one vote," and the question was decided by simple majority of votes. A good many points were carried by very small majorities. When great commercial interests are at stake, it is not very satisfactory that the combined vote of England and the United States should be neutralised by the votes of Hayti and Montenegro. But it is difficult to see what other system could have been adopted. If votes had been apportioned in proportion to the populations represented by the various delegations, no doubt matters would have been equalised as between the Anglo-American and the continental systems, but China would have had an overwhelming vote. Votes proportioned to commercial interests could only be based on unreliable estimates, and would not, I think, be acceptable to our continental friends.

Early in the Conference the question was raised whether an attempt should be made to draft a Uniform Law for general adoption, or whether the Conference should confine itself to discussing the points of divergence in

the various national laws, and then formulating resolutions as to the rules to be adopted. We, of course, were in favour of the latter plan. We should have liked to have had the resolutions formulated with the names of the countries which supported or opposed them, and a brief abstract of the reasons for or against them. But the almost unanimous opinion of the Conference was in favour of the former course. In the result the deliberations of the Conference have produced a draft Convention and draft Uniform Law for general adoption. Thirty-one nations signed the Protocol agreeing to the Convention, three nations have not signed, but have made no protest. England and the United States formally declared that they could not become parties to any such scheme (Blue-Book, pp. 28 and 149). The draft Uniform Law is to be circulated for criticism to the various Governments which took part in the Conference, and a further Conference is to be summoned at The Hague next September to consider criticisms and finally pass the Uniform Law.

The procedure by which the Uniform Law was evolved was as follows: The Conference opened with an informal discussion in plenary session of the eighty-nine points raised by the Questionnaire. The Conference was then split up into five sections, each containing the delegates of seven nationalities. The points raised by the Questionnaire were then considered *seriatim*, and new points were allowed to be raised. The opinions of the different nations were elicited, and then the report of the proceedings of each section was presented to the central committee. The central committee was composed of the five presidents of the sections, the five *rapporteurs*, five expert members, *i.e.* bankers and merchants, and five other selected members, representing in all about fifteen nations out of the thirty-five. Mr. Huth Jackson and myself served on the central committee, but our United States colleague unfortunately did not. Taking as the basis of its discussions the reports of the five sections, the points raised were again gone through, and when opinions differed, votes were taken, and the questions were decided by simple majorities. The conclusions of the committee were then drawn up by the very able *rapporteurs* of the committee, MM. Lyon Caen and Simons. They were presented in print within two days of the termination of the committee, not as resolutions, but in a series of articles forming a complete draft law (Blue-Book, pp. 28 and 48).

These articles were then brought before the Conference in plenary session, and were passed in one sitting without amendment and with very little discussion. The committee on Private International Law then submitted their report, and submitted three draft articles, which were agreed to by the Conference. These articles only deal with conflicts of law, between the parties to the Convention, on points which by the Convention are left to be settled by national law, *e.g.* whether a bill must be presented on its due date, or whether, as the Uniform Law provides, the holder may present it either on its due date or on either of the two succeeding days. The *rapporteurs* of the central

committee, and the *rapporteurs* of the International Law Committee (MM. Renault and Kriege) were then instructed to incorporate the three articles on the conflict of laws into a preliminary draft of the Uniform Law, making at the same time any necessary drafting alterations. The next day the combined work of the four *rapporteurs* was presented to the Conference in the form of a draft Convention and Uniform Law, and this draft, after some desultory discussion, was adopted by the Conference without division. England and the United States merely stated their reasons for standing aside (Blue-Book, p. 28).

To any one who knows the difficulty of drafting a code, the work of the *rapporteurs* of the central committee, who produced a complete draft code immediately after the conclusion of the labours of the committee, must seem like a modern miracle. But there is an explanation. The Germans, with their usual thoroughness and forethought, had prepared and circulated a draft code (in French and German) before the Conference met. On the whole the votes of the central committee, largely influenced by the tact and ability of M. Simons, one of the German delegates, supported the views of the German draft, and so that draft was capable of being used as a basis, the necessary amendments being engrafted on to it. Still, even with this great aid, the *rapporteurs* accomplished a notable piece of work.

Next year the Conference will meet again to complete its work, but I venture to think that England and the United States must still continue their attitude of benevolent neutrality. Some of the more obvious reasons for this attitude may be briefly indicated.

The draft Uniform Law differs very considerably from the Anglo-American system. Mr. Huth Jackson and myself have drawn up a memorandum commenting on thirty-nine questions of more or less importance where the two systems differ (Blue-Book, p. 75), and a prolonged comparison of the Uniform Law with the Bills of Exchange Act will probably disclose a good many more. In several cases the rules of the Uniform Law appear to us to be commercially inconvenient, as for instance the rule which nullifies a bill which is issued undated, it may be by accident, the rule that the holder cannot refuse a partial acceptance, and the complicated rules as to notice of dishonour. Again, the Uniform Law, quite rightly, applies alike to inland and foreign bills and notes. It would be highly inconvenient for the countries which adopt it to have each two codes, one applicable to foreign and the other to inland bills. But we should object in England to have every dishonoured bill and note protested, and we should also object to the commission of $\frac{1}{6}$ per cent. in addition to the ordinary damages. The rule that every holder of a bill is entitled to demand a set, even though the bill is issued as a sola bill, is capable of vexatious abuse. The general attitude of the continental codes differs from the English view. Our English law in the main reproduces the usages of bankers and traders. The continental codes have been framed for bankers and traders by their respective legislatures.

Speaking broadly, the continental codes tell bankers and traders what they may do. They start with a normal trade bill and then carefully police it throughout its whole career. English law tells its citizens what they may not do, but, subject to the avoidance of things prohibited, leaves them free to make any arrangements they like.

But apart from differences in the two laws, there are cogent reasons why we should not become parties to the Convention. It is proposed that the nations who adopt the Uniform Law should adopt it, not by independent legislation, but by convention, that is to say it must be adopted in its entirety, without addition, derogation, or alteration, except so far as certain points are by the law itself left open to restricted modification by the national legislatures. The contracting parties are as far as possible to adhere to the Convention for their colonies as well as for their own territories. They may enact the law either in French or by translation, but in case of doubt, the original French document is the authorised version. No modifications in the law can be made for three years, but after that time any five contracting States may require the Netherlands Government to summon a Conference to consider alterations (Blue-Book, pp. 120-5).

One cannot imagine the English Parliament adopting a code made on the Continent at a Conference where the English vote was of little account and accepting it without powers of revision or effective discussion. The only points that could be debated would be (1) acceptance or rejection as a whole, and (2) the correctness of the translation. It would be amusing, if not instructive, to hear the House of Commons discussing the exact English equivalent of French technical terms and phrases.

But assuming that Parliament could be induced to swallow the Uniform Law blindfold, the result would not be complete uniformity. On the Continent the Uniform Law would be fitted in to the existing commercial codes, and would be administered by tribunals of commerce as a part of those codes, and with the appropriate special machinery. The decisions of those tribunals do not, I believe, constitute binding precedents, and the somewhat loose, though pregnant, provisions of their codes seem to be treated rather as authoritative instructions to the judges than as we regard an Act of Parliament. In England the Uniform Law, if adopted, would be immersed in the common law, and would be construed by the civil Courts like any other statute, in accordance with the highly technical rules of statutory construction. Our Courts minutely weigh and criticise every word and phrase of a statute, dealing with it as if it were a matter of verbal inspiration. The fact that the authorised version would be the French original at the Hague would add to the complication. There is also another objection. The Uniform Law deals only with bills of exchange and promissory notes payable to order. It has no application to cheques or to promissory notes payable to bearer. We should therefore require separate enactments to deal with these instruments, and this, to say the least of it, would be embarrassing.

The reason why the Uniform Law is so restricted appears to be this. The continental laws look very much askance at instruments payable to bearer, and in some countries notes to bearer are absolutely prohibited. Again, with us a cheque is merely a bill of exchange, drawn on a banker, and payable on demand. All its special incidents flow from the fact that it is drawn on a banker. On the Continent a cheque is not necessarily drawn on a banker, and is not a bill of exchange. It has some of the incidents of a bill of exchange, but is really an instrument *sui generis*, and of comparative novelty.

But though England and the United States cannot become parties to the Uniform Law, it by no means follows that the Conference will not be productive of great good. In the first place the friendly interchange of views between the delegates of so many nations is profitable in itself. In the second place we hope that in September next the nations which have approved the draft Convention will adopt the Uniform Law. In that case a great step forward will have been made. Instead of the present multiplicity of laws relating to bills of exchange we shall have only two great systems, namely, the Anglo-American and the Continental. That alone ought greatly to simplify the transactions of international commerce. We may fairly hope, too, that when these two great rival systems are brought face to face, many of the points of conflict will gradually be removed. On some few points the rules of the Uniform Law are more convenient and equitable than our rules, and we should improve our law if we adopted the continental rule (Blue-Book, pp. 75 and 81). On some other points, one rule is as convenient as the other, and it might be worth while to adopt the continental rule for the sake of uniformity, if the other nations would be willing to act on the principle of give and take. But perhaps it is well not to be too sanguine in these matters. It is difficult to induce Parliament to make any change in the law where the impetus of party prejudice or passion is wanting. Moreover, any change in accustomed rules creates temporary disturbance in business. Most people are agreed that it would be a vast improvement if we adopted the decimal system in our coinage, weights, and measures. Posterity certainly would bless us if we did. But then posterity has done nothing for us. We firmly decline to put ourselves about for the benefit of posterity when posterity cannot do anything to repay us for our trouble.

NOTES ON LAND TAXATION IN ENGLAND.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ., M.A.]

Roman Period.—The taxation of land has always originated such primary questions as to whether the taxation should be upon the area of the land itself, or upon its produce; and in either case specific, per unit of surface or annual produce, or ad valorem.

An examination into the taxation of land in England throughout successive periods involves some consideration of the system of taxation which prevailed in Britain when a Roman Province.

By Roman law conquest vested the land of the conquered people in the victorious State; it was confiscated, and became *ager publicus*. On the close of the war such land, if in cultivation, was dealt with in some one or other of the following ways: (1) By sale in full ownership (*agri quæstorii*); (2) by grant in full ownership to Roman citizens (*agri dati adsignati*); (3) by restoration to former owners (*agri reddîti*); (4) by lease at rent either in kind or money (*agri vectigales*). All mountain pastures and woods were either granted (*concessa*), sometimes to the old proprietors, and sometimes to a Roman colony or municipality, or reserved as *ager publicus* by the State; when a rent was payable they came under the head of *agri vectigales*. Pastures were sometimes appropriated to individuals, but held pro indiviso; sometimes made common to the adjacent community. Taxes were collected on the cattle by the tax-farmers (*publicani scriptuarii*); the revenue appeared in the Censor's book as *pascua*. The general term of *possessores* was applied to the occupants of public land in the provinces to distinguish them from the absolute (*quiritarian*) owners.

At the period of the revolt of the Britons under Boadicea, the conquered inhabitants were subjected to the severest exactions. They are indicated by Dion Cassius in the following passages from the Queen's oration to her army:

> You have learnt by your own experience how much liberty is to be preferred to servitude, insomuch that if there were some among you who, through an incapacity of making a good choice, had formerly suffered themselves to be surprised by the false promises of the Romans, they would at this time acknowledge the fault they had committed in renouncing the government of their country to submit to foreign authority. . . . What usage—how shameful and how cruel—have you not undergone since these strangers came into Britain? Have we not been deprived of all our best and largest properties, and forced to pay them tribute out of the remainder?

Is it not for them that we are obliged to labour and till the ground, and do they not force us every year to give up some of our children for tribute? . . . But why should I mention the impositions they lay upon us during our lives, since we are not exempt from them at our deaths?

Do you not feel the weight of that impost which they compel you to pay for those who have paid to nature the last tribute which all mankind owes her? There is no country where the slaves are not freed at the end of their lives from the power of their masters. The Romans alone have found the secret of restoring life in some measure to those who have lost it in order to still exact from them the wherewithal to satisfy their avarice. But if we have no money, as how should we have any, and where can we get it? we are left as naked as those who are murdered.

The condition of the Britons was improved by Agricola, who completed the conquest, and, as additional territory was acquired, Britain ultimately came under all the various provisions for taxation settled by the forma provinciæ. Among such provisions would be the following:

The *annona*, or yearly corn-tax, paid in kind, and applied in supporting the civil and military officials in the Roman province. The poll-tax (*tributum capitis*); the imposts on mines; the dues from *portoria*; the 5 per cent. duty on legacies, paid only by Roman citizens in Italy until after the edict of Caracalla (A.D. 215); a duty of 1 per cent. (*centesima*) on res venales; and of 4 per cent. on the purchase-moneys of slaves. Towards the end of the third century Diocletian divided the Roman Empire into twelve διοικήσεις, each of which comprised a number of provinces; in the διοικήσις of Britain there were four provinces.

Each διοικήσις was under a deputy governor (Vicarius), answerable only to the præfectus prætorio; the governors of the provinces were proconsuls, consulares, or præsides; the empire was resurveyed for financial purposes, and all taxation, so far as it affected the land, was based on a division of the soil into juga, each division, though differing in acreage from others according to its fertility, being rated in the same value. The *Jugum*, or *Jugerum*, was a little over 2 roods 19 perches, or almost five-eighths of an English acre. It was the quantity of land which could be ploughed by a yoke of oxen in one day.

In provinces which submitted voluntarily a tenth of the corn (*frumentum decumanum*), and in those which were conquered an arbitrary quantity of corn (*frumentum stipendiarium*) was exacted.

Britain as a Roman province was divided into Coloniæ, Municipia, Latin cities and Stipendiary towns, and in each of these divisions Roman citizens would be favoured in many respects as compared with the British inhabitants.

This sketch of taxation in Britain is sufficient to show that the general principles of Roman taxation, except the early Roman *tributum* payable by quiritarian owners of land, were in force.

As the conquered country became an imperial and not a senatorial province, its revenue was paid into the privy purse of the Emperor (*fiscus*), and not into the municipal treasury of Rome (*Ærarium*). The Roman

conquest involved the confiscation of all the land and belongings of the British inhabitants, who by the laws of war were reduced to slaves.

This direct result of conquest was, however, modified by the *forma provinciæ* drawn up by the Consul commanding the army of occupation. But the Britons were forced to pay away both in kind and in money a large portion of the annual produce of their agricultural labour, and the native wealth thus exacted went to swell the coffers of the Roman emperors and defray the civil and military expenses in Britain of the Roman administration. By the act of confiscation the land came into the absolute ownership of the conquering State, and the subsequent revenue derived from the possessores was rather in the nature of rent payable out of its annual produce than of taxation. The Roman taxation of land held under quiritarian ownership was in effect an income-tax on Roman citizens in respect of their whole property, including their lands, such citizens and the value of their property being entered on the Census.

(*To be continued.*)

A SCHOOL OF INTERNATIONAL LAW.[1]

[*Contributed by* W. R. Bisschop, Esq., LL.D.]

Resolution.—That in view of the approaching opening of the Permanent Palace for a Tribunal of International Arbitration at The Hague, and in the interest of strengthening the efficiency of that Tribunal as a Court for the solution of international difficulties and the continuity of its decisions, it is desirable that steps be taken to establish in connection therewith a school for the study of international law in all its branches, and that the Executive Council be requested to co-operate in any movement which may be made for the realisation of this idea.

In proposing this resolution, nothing new and unheard of, nothing excitingly fresh is put forward, but simply a further step advocated in the development of the idea which prevailed when the delegates of the nations were assembled to a Peace Conference at The Hague, and an International Court was established for the settlement of disputes among nations.

International arbitration is no longer considered as belonging to the domain of never-to-be-realised ideals. It has become a fact, it exists. It has to be popularised, to grow and gradually to extend its influence until it has become so common and natural that it is considered part and parcel of the international intercourse between nations.

One of the steps in this evolution is to render the law of nations a subject of scientific study at the very seat where that law has to be formulated by the international arbitration, where it has to be pronounced, to be observed, to be sanctioned and to be moulded into the common law of the world.

True, the law of nations, international law, is a subject of study at more than one university, and it is to be hoped that it will not only remain a subject of study, but will once become an obligatory part of a qualification for any law degree at all universities of civilised nations.

While, however, the study of international law should not be absent from any school of law, at the same time a school of law, of international law, should not be wanting at the seat where that international law has to be practised. In the same way as the Inns of Court and their legal education

[1] A paper read before the Conference of the International Law Association in the Guildhall, London, August 2, 1910.

were the corollary of the King's Courts of Justice in England, so the school for the law of nations should be the corollary of the Nations Courts of Arbitration at The Hague.

The work done at The Hague International Conferences—misnamed Peace Conferences, for strife will never be ended between nations, and eternal peace there shall only be in death—is of a twofold nature.

(*a*) **Parliament of Nations.**—It created an assembly of representatives of all nations for the discussion of subjects of mutual interest. Though these subjects were limited in the first Conference of 1899 to the items of a previously carefully prepared programme, they were extended in the Conference of 1907, and their tendency is to enlarge and to grow, as is the tendency of all discussions at assemblies of representatives of the human race.

If these Conferences are to be repeated—and the reassembly of the nations' representatives in the near future is not altogether of a hypothetical character—they are destined to become assemblies for the preparation and establishment of rules of international law, to be observed by all, as they received the consent from all.

For such development there must be continuity (1) in the regularity of these Conferences, (2) in the continuation of business done at further conferences by following Conferences. For such continuation—in order to be fruitful—there should, in the meantime, be preparation, digestion of the resolutions adopted at the former Conferences, popularising of the ideas brought forward.

(*b*) **Court of International Arbitration.**—The second work done by The Hague Conferences was the creation of a Court of international arbitration, a means of solution of difficulties between nations by other methods than the arbitrament of war.

It was the creation of a permanent tribunal for international arbitration which marked the commencement of extending civilisation, which is observed between individuals, to nations.

"The time is coming when war between nations will be looked upon as barbarous as the duel between individuals is to-day. When two citizens quarrel we do not allow them to be judge in their own dispute and settle the matter by taking the law into their own hands. Before an impartial tribunal their dispute must be brought; and what is good for individuals cannot be bad for nations, which are simply an aggregation of individuals."

Several proposals were made at the Conference of 1907 to establish a compulsory Arbitration Court. Unanimity on that point was not obtained. Yet the idea found favour in many eyes, and it is not insignificant that recently the following declaration fell from the lips of President Taft: "Personally I do not see any more reason why matters of national honour should not be referred to a Court of Arbitration than matters of property or of

national proprietorship. I know that is going farther than most men are willing to go, but I do not see why questions of honour may not be submitted to a tribunal composed of men of honour who understand questions of national honour, to abide by their decision, as well as any other question of difference arising between nations."

Also in this respect there should be continuity, not a series of decisions which do not maintain reference to each other. Precedents should be created and precedents should be followed. Gradually there should be built up—in the words of Professor Nippold—"eine völkerrechtliche Judikatur" —a jurisprudence regarding the law of nations, a *lex communis inter nationes*.

In order to obtain such continuity the Court should have its school, its teachers, its disciples. As it has received its Palace and its Library, it should have its pupils eager to learn how to continue the building up of the true law of nations.

It has already been stated that this idea is not a new one. It has found its advocates and supporters among the highest and most influential, the most learned and the most sagacious among the men of the world, who, though divided by nationality and different occupations in life, unanimously recognise the desirability of promoting the study of the law of international intercourse at the centre where it is vindicated.

It was perhaps Professor von Bar who in 1900 first launched the idea of an international school of law at The Hague, of which the legal opinions would carry even greater weight than the decisions of the international tribunal, in the same way as the *responsa* of the jurisconsults in Rome, and the opinions of Grotius and other men learned in law of Roman-Dutch law.

Next I want to mention the Russian diplomat and scholar, his late Excellency M. von Martens of Petersburg, who in a speech which he made in Vienna in the winter of 1906-7 dwelling upon the idea of a University of International Law at The Hague called that idea "noble and worthy of consideration" (edel und beherzigungswerth).

The remarks passed by these men and others were followed by a carefully conceived and worked-out study by the Swiss Professor Ottfried Nippold of Berne in the *Deutsche Revue* of April and December 1907, and December 1908.

I make special mention of these articles of Professor Nippold, not only because they are the most complete treatise on the utility and necessity of an international school of law at The Hague, but, above all, because the first of these articles (April 1907) gave an opportunity to the President of the second Peace Conference at The Hague, his Excellency M. Nélidow, then Russian Ambassador in Paris, at the beginning of the third plenary sitting of that Conference on July 20, 1907, to express his sympathy with this idea in the following terms:

Je voudrais, avant de terminer, faire mention d'une communication particulière ou plutôt d'une suggestion intéressante qui m'est parvenue. M. Richard Fleischer, rédacteur de la *Deutsche Revue*, m'a envoyé un numéro de son journal dans lequel le Professeur Ottfried Nippold, de Berne, recommande à la Conférence la création à La Haye auprès du Tribunal d'Arbitrage d'une école centrale de droit international qui servirait à répandre les saines notions en cette matière et les enseigner à ceux qui seront plus tard appelés à les appliquer.

Ce serait, j'imagine, un cours de droit réuni à une académie qui en étudierait et conserverait les principes continuellement rajeunis par la pratique que leur donnerait le fonctionnement du Tribunal Suprême d'Arbitrage : quelque chose comme un " asklepion " qu'avait fondé à l'Ile de Cos Hippocrate pour la science médicale.

J'ai cru devoir citer cette intéressante suggestion, car je la trouve sympathique et capable de rendre, si l'idée était appelée à prévaloir, de grands services à la cause que nous servons tous. Peut-être la mention qui en est faite ici et qui rencontre, j'espère, la sympathie de la Conférence, pourra-t-elle inspirer à quelque généreux donateur l'idée de vouloir, à l'exemple de Mr. Andrew Carnégie, immortaliser son nom en l'attachant à un établissement qui servira puissamment la cause de la paix et de la justice internationale en contribuant à en répandre les principes et à lui préparer de dignes serviteurs.

The second Conference did not stop there. Encouraged by the words spoken by its President at the opening of the third plenary meeting, the Roumanian statesman and representative at the Conference, his Excellency Demetrius Sturza, submitted to the Conference a carefully worked out plan for an international school of law at The Hague, which may one day serve, as President Nélidow observed at the opening of the fifth plenary meeting (September 7, 1907), as a plan for such a school when the pacific institutions which the Conference wishes to organise in The Hague have sufficiently developed to create a continuity of international law and a judicial practice which one day will demand to be codified.

His words were the following :

Vous voudrez bien vous souvenir, messieurs, que dans notre troisième séance j'ai eu l'honneur de vous signaler une suggestion qui m'a été faite à ce sujet par le rédacteur d'une revue allemande.

Elle a poussé l'éminent homme d'état Roumain, épris de l'idée du développement du droit des gens, à élaborer un projet que je dépose dans les archives de la Conférence. Il pourra peut-être servir un jour à faciliter la réalisation de cette idée, si elle était appelée à prendre corps, lorsque les institutions pacifiques que la Conférence veut organiser à La Haye auront été suffisamment développées pour créer une continuité de droit international et une pratique judiciaire qui demanderait à être codifiée.

The plan of his Excellency Sturza was accompanied by a letter, of which I quote the following passage :

La Conférence de la Paix poursuit un grand but : celui d'arriver à régler pacifiquement les conflits internationaux.

On a établi à cet effet en 1899 une Cour Permanente d'Arbitrage avec la mission

de juger les litiges qui lui seront soumis. La Conférence tâche actuellement de donner à la justice arbitrale un développement encore plus considérable. Ce serait donc le moment de créer entre la jurisdiction internationale et la Conférence un lien, qui ne peut être un autre que celui de la science, afin que la pratique et la théorie puissent marcher de pair en s'entr'aidant mutuellement. Il siégerait alors à La Haye une institution complète du droit des gens, dont la direction serait confiée à la Conférence de la Paix, l'exécution pratique au conseil administratif permanent institué en 1899, et le développement scientifique à une académie du droit des gens qui maintiendrait d'une manière méthodique la science à la hauteur des principes énoncés par la Conférence et la pratique à la hauteur des progrès inaugurés.

The plan itself is as follows :

Ayant en vue la nécessité de développer d'une manière méthodique le droit des gens et son application pratique dans les relations internationales, la deuxième Conférence de la Paix siégeant à La Haye décide de créer une académie du droit des gens et de l'établir sur les bases suivantes :

Art. 1. Une Académie du Droit des Gens est fondée à La Haye.

Art. 2. Les membres de cette académie seront élus parmi les savants, les professeurs d'universités et les jurisconsultes les plus éminents de tout pays et d'une compétence reconnue dans les différentes matières du droit des gens, telles que—droit international public et privé, droit de guerre, droit commercial comparé, systèmes du commerce et relations économiques, systèmes coloniaux, histoire du droit des gens.

Les cours de l'académie du droit des gens de La Haye se feront indistinctement en allemand, en anglais, en français et en italien.

Art. 3. Le nombre des membres de l'académie du droit des gens de La Haye ne sera pas supérieur à celui de dix. Ces membres seront nommés pour une période de . . . par la seconde Conférence de la Paix de 1907.

Les cours annuels de l'académie du droit des gens se tiendront pendant les mois de mai, juin et juillet. Ils prendront leur commencement le 1er mai 1908.

Art. 4. Les frais de l'académie du droit des gens de La Haye seront prélevés sur les contributions des Etats représentés à la seconde Conférence de la Paix de 1907, qui adhéreront à la création de l'académie.

Chaque Etat adhérent déclarera la part contributive qu'il s'oblige à payer et qui s'élèvera de 2,000 à 4,000, 6,000, 8,000 et 10,000 francs.

Art. 5. Le conseil administratif permanent de La Haye constitué par l'art. 28 de la Convention pour le règlement des conflits internationaux de 1899 est chargé de l'administration intérieure et des fonds de l'académie du droit des gens à La Haye et fixera la rémunération des membres de cette institution internationale.

Art. 6. Dans le cas où cette académie prendrait un développement nécessitant un local spécialement aménagé et destiné à cet effet, le conseil administratif permanent de La Haye s'adresserait aux Gouvernements des Etats adhérents pour réunir les fonds nécessaires.

Art. 7. Chaque Etat ayant adhéré à la création de l'académie du droit des gens de La Haye a le droit de désigner pour fréquenter les cours de cette institution des diplomates, des militaires, des employés des administrations supérieures des Etats et des savants.

Le nombre des envoyés aux cours de l'académie sera en proportion des contributions de chaque Etat, à savoir—deux, quatre, six, huit et dix.

Of course, these are not the only utterances in favour of such proposition. I have only given these to mark the steps by which the progress of the idea can be followed, the stepping stones on its way to realisation.

I hope that the International Law Association will add a new landmark on that road of progress and evolution by passing this resolution as a mark of adherence by men of practice to the ideas developed by men of learning and diplomats.

MERCHANT SHIPPING LEGISLATION OF THE EMPIRE.

[*Contributed by* A. Berriedale Keith, Esq.]

The confused position of Merchant Shipping legislation throughout the Empire is strikingly illustrated by a recent decision of the Court of Appeal of New Zealand, in the case of the *Huddart Parker & Company Proprietory (Limited)* v. *Nixon*.[1] In that case the plaintiff was a proprietory company incorporated under the State of Victoria, and owning steamships which were registered in Melbourne, although the company had agency offices in New Zealand. These steamships traded with New Zealand and were engaged in the coastal trade. The seamen and officers were engaged on articles signed in Melbourne or in Sydney which were for six months and fixed the wages of the persons employed. The wages were paid by monthly advances at Melbourne or Sydney according to the place of engagement. The wages in question were in some cases equal to or greater than the current rate of wages payable in New Zealand, but were in some cases less than the current rate of wages. The wages were fixed by an award of the Commonwealth Court of Conciliation and Arbitration which was constituted by virtue of the Commonwealth Conciliation and Arbitration Act, 1904.

The Marine Department of the New Zealand Government claimed that while the ships were in New Zealand ports, and while they were trading between two New Zealand ports, they were subject to the provisions of s. 75 of the Shipping and Seamen's Act, 1908, of the Parliament of New Zealand. That Act[2] provides that in the case of seamen engaged in New Zealand or engaged abroad but employed in New Zealand, the seamen while so employed shall be paid and may recover the current rate of wages for the time being ruling in New Zealand. It also provides (sub-s. 2) that the Superintendent of the port at which a ship loads or discharges cargo carried coastwise shall notify the master of the ship of the provisions of the section, and the Superintendent is empowered to have the ship's articles endorsed so as to show clearly the amount of wages payable. By the next sub-section the Collector of Customs is authorised to detain the final clearance of the ship until he is satisfied that the crew has been paid the current rate of wages ruling in New

[1] [1910] 29 N.Z.L.R. 657.

[2] Its provisions are followed in the Navigation Bill recently introduced into the Commonwealth Parliament; see s. 92.

Zealand, or any difference between the agreed rate of such wages and the New Zealand rate of wages. The company held that they were only obliged to pay the rate of wages provided for in the articles, and the questions submitted to the Court were whether s. 75 of the Shipping and Seamen's Act, 1908, applied to the company's ships while in New Zealand ports, and while at sea between New Zealand ports; whether the Superintendent of Mercantile Marine had the right to endorse the articles of the company's ships as provided in sub-s. 2 of s. 75 of the Act, and whether seamen employed on the company's ships could sue in New Zealand for the current rate of wages ruling in New Zealand, notwithstanding that a different rate of wages was fixed by the ship's articles.

It was argued by the counsel for the plaintiff company that s. 75 of the Act was *ultra vires* as being contrary to the provisions of the Imperial Merchant Shipping Act, 1894. It was pointed out that as regards ships registered in the United Kingdom, s. 166 of the Merchant Shipping Act of 1894 provided that when a seaman was engaged for a voyage or engagement which was to terminate in the United Kingdom, he should not be entitled to sue in any Court abroad for his wages except under certain circumstances which did not arise in the case in question. To a ship registered in England the provisions of s. 75 could therefore not apply, and it was argued that the case was not different with regard to ships registered in Victoria inasmuch as s. 736 of the Imperial Act permitted only the regulation of the coasting trade on condition that it applied equally to ships wherever registered. If, then, ships registered in the United Kingdom were exempt from the provisions of s. 75, and ships registered in Victoria were not, the condition laid down in s. 736 of the Imperial Act would be invalidated and therefore s. 75 must be held as not applicable to ships other than those registered in New Zealand. It was also pointed out [1] that the section would be ineffectual since there was nothing to prevent the company from deducting the extra amount paid in New Zealand from the wages which it paid in Victoria.

It was also argued that if the opinion of the Chief Justice of New Zealand in *Re the Award of the Wellington Cooks' and Stewards' Union* [2] was followed, to the effect that a ship registered in New Zealand was part of the territory of New Zealand, then a ship belonging to the plaintiff company was part of the territory of Victoria even in a New Zealand port. The case of the *Peninsular and Oriental Steam Navigation Company* v. *Kingston*,[3] which was the authority for the doctrine that a ship engaged in coastwise trade was subject to the law of the country along which it was coasting, had no application to New Zealand, for it depended on the special provision of s. 5 of the Commonwealth of Australia Constitution Act, 1900. For the defence it was argued that the power which had been exercised under s. 75 of the Act was expressly conferred by s. 736 of the Imperial Merchant Shipping Act of 1894. It

[1] Quoting *Journ. Soc. Comp. Leg.* 1908, p. 208.
[2] 26 N.Z.L.R. 394. [3] [1903] A.C. 471.

was not admitted that the plaintiff company could deduct the amount paid in New Zealand when its vessels reached Melbourne, but whether it could or not was no concern of the Court, which must administer the law of New Zealand and leave the effect of its decision in Victoria to be determined by the Victorian Courts. The power to regulate the coastal traffic included the power to regulate that traffic while outside territorial waters.

The Court decided in favour of a limitation of the validity of s. 75 of the Act by majority, Stout C.J. and Williams and Chapman JJ. being on two points agreed against the dissent of Edwards J., while on another point Edwards and Chapman JJ. agreed, though the latter withdrew his opinion as junior judge. The Chief Justice,[1] while adhering, despite criticism, to the views which he had expressed in the *Wellington Cooks' and Stewards' Union* case, pointed out that different considerations were involved in this case. He held that s. 75 was *ultra vires* so far as it purported to authorise seamen engaged on a British ship for a voyage on an engagement made in the United Kingdom to sue for wages abroad, as this power was repugnant to s. 166 of the Merchant Shipping Act, 1894. Nevertheless s. 75 did, except in this particular, apply to all ships wherever registered if engaged in the coasting trade, in accordance with the power given under s. 736 of the Imperial Merchant Shipping Act, 1894. In the case of vessels registered in Victoria, the position was somewhat different; but as they were registered and controlled by Statute which the Imperial Legislature authorised the State of Victoria to pass, they ought to have the same protection as British ships registered in England. He therefore held that power to endorse the articles had been properly vested in the Superintendent of Mercantile Marine, and that a seaman could sue in the Courts of New Zealand for the extra wages which were due to him, but not for the wages provided in the articles.

Williams J.[2] said that the provisions of s. 75 were authorised by s. 736 of the Imperial Merchant Shipping Act of 1894; he was inclined to agree that in so far as s. 75 purported to give a seaman the right to sue for wages in the articles, it might be repugnant to s. 166 of the Imperial Act, and to that extent void, though he was not quite so distinct on this point as the Chief Justice. On the other hand, Edwards J.[3] held clearly that s. 75 was *ultra vires* as conflicting with s. 166 of the Imperial Act, and that therefore the seaman was neither entitled to nor could sue for the extra wages. It was therefore illegal for the Collector of Customs to refuse a clearance. He recognised that there was a distinction between ships registered in Victoria and ships registered in the United Kingdom, and that strictly speaking the New Zealand law could not be regarded as being repugnant to a Victorian Act, but he relied on the argument that if a distinction were

[1] 29 N.Z.L.R. 657, at pp. 662 *sq.*
[2] 29 N.Z.L.R. 657, at pp. 666 *sq.*
[3] 29 N.Z.L.R. 657, at pp. 670 *sq.*

made in the treatment of ships registered in the United Kingdom and ships registered in Victoria, the purpose of s. 736 of the Imperial Act, which requires that vessels should be treated alike wherever registered, would be defeated, and therefore that s. 75 must not be held to apply to vessels registered in Victoria. He also called attention to the unfairness of the position which would result from enforcing s. 75. In several cases the wages under the articles were greater than those payable in New Zealand, and yet the owners could not reduce the wages on that ground, whereas they were required to increase the wages in the cases in which they were not equal to those payable in New Zealand.

Chapman J.[1] agreed in substance with the Chief Justice and Williams J., but not on the grounds given by them for their decisions. He reconciled s. 136 of the Imperial Act with s. 75 of the New Zealand Act on the ground that the two sections dealt with totally distinct matters. The New Zealand Act provided for an addition to the wages of the crew to be enforced not by suit in the Courts, but through the action of the Collector of Customs in refusing a clearance, so that there was no real discrepancy between the Imperial and the local Acts.

It is not exactly easy to follow the judgment of the majority of the Court. They were not apparently prepared to claim that the power of regulating the coasting trade conferred upon the New Zealand Parliament by s. 736 of the Imperial Act of 1894 extended to altering a provision of the Imperial Act.[2]

On the other hand, they held that the New Zealand Parliament could alter the effect of the Imperial Act by changing the rate of wages of a seaman engaged for a voyage which was to terminate in the United Kingdom, and by giving him a right to recover by action in the New Zealand Courts the difference between the wages payable to him under his articles and the wages current at the time in New Zealand.

It is difficult to see how direct repeal of a provision of an Imperial statute differs substantially from the power claimed for the Dominion Parliament by the majority of the Court. It is clear that the intention of the section of the Imperial Act in question is that a seaman shall be entitled normally only to sue for wages in the United Kingdom, and the wages in question are clearly those stipulated for in his agreement. To give him the right to higher wages during a portion of his service, and to enable him to sue for the difference between his ordinary wages and the higher wages, is in everything but form to alter substantially the section of the Imperial Act. It is difficult to question why the majority of the Court were not content to hold that the power to regulate the coasting trade was sufficiently wide to enable the Parliament to repeal provisions of the Imperial Act which would other-

[1] 29 N.Z.L.R. 657, at pp. 674 *sq.*

[2] This was, it seems, asserted for the defendants, quoting Keith, *Responsible Government in the Dominions*, pp. 192–4; see 29 N.Z.L.R. at p. 661.

wise normally apply. It may indeed be doubtful as a matter of history whether, in giving in 1869 to colonial Parliaments the power to regulate the coasting trade, it was meant to do more than confer upon the Parliaments the right of opening or closing that trade to such vessels as they thought fit; but the Act must be read not with regard to the original intention of the clause, but to the effect of the wording, and the power to regulate the coasting trade as given in the Act of 1894 is so widely expressed that it seems clear that it must extend to repealing provisions of the Imperial Act which would otherwise be inconsistent with the local legislation.

If this were not the case, the power to regulate the coasting trade which has been conceded by the Imperial Government as belonging to the Parliaments of the Dominions would become little more than meaningless, and it would seem simpler to place on the power of regulating a wider meaning than to accomplish the same result by ingenious efforts to reconcile the provisions of the Dominion and the Imperial legislation. It must also be remarked that in the case in question the provision of the Imperial statute had no application, for not only was the vessel in question registered in Victoria, but the seamen were not engaged for a voyage or engagement which was to terminate in the United Kingdom.

All the members of the Court appear to have acquiesced in the view that the Victorian statute No. 1557, which adopted the provisions of the Imperial Act, 1894, including s. 166, was to be regarded in the light of a colonial statute. The Chief Justice merely said that as the vessels were registered and controlled by statute which the Imperial legislature had authorised the State of Victoria to pass, they ought to have the same protection as British ships registered in England; apparently admitting that the Act had not, strictly speaking, the force of an Imperial Act, and this view was clearly expressed by Edwards J. If this were the case, then it is clear that the provisions of the New Zealand Act could not possibly be invalid, as there was nothing to which they could be repugnant except the law of another Colony. But as a matter of fact, the Court appears to have overlooked the fact that by s. 264 of the Imperial Merchant Shipping Act of 1894, the same effect as that of the Imperial Act itself is given to Acts passed by legislatures of British possessions which applied to British ships registered at, trading with, or being at another port in that possession any provisions of Part II. of the Merchant Shipping Act of 1894 which would not otherwise apply.

The Victoria Parliament by Act No. 1557 applied, *mutatis mutandis*, to ships registered in Victoria the provisions of Part II. of that Act, including s. 166, and it would appear therefore that as a result there is imported into the Imperial Act a provision to the effect that if a seaman is engaged for a voyage terminating in Victoria, he shall not be entitled to sue abroad for his wages. There does not therefore appear to be any substantial difference between the case of vessels registered in the United Kingdom

and vessels registered in a Colony if that Colony has adopted under s. 264 the provisions of s. 166 of the Act of 1894.[1]

But whatever grounds the decision is based upon, it is perfectly clear that much confusion will inevitably arise in shipping matters unless some agreement can be come to between the various parts of the Empire as to uniformity of legislation. The Chief Justice of New Zealand, who himself in the case of the *Wellington Cooks' and Stewards' Union* laid down the principle that the whole law of New Zealand accompanies a ship registered in New Zealand wherever it goes, expressly admitted in the course of this case that a ship registered in Victoria was subject while in New Zealand ports and engaged in New Zealand coasting trade to the law of New Zealand. It appears therefore that a vessel registered in the United Kingdom which engaged both in the coasting trade of Victoria and New Zealand will come within no fewer than three jurisdictions at three periods of the voyage, and of course the number would be increased if it resorted to Fiji.

Unquestionably there is much weight in the argument that a vessel which intervenes in the coasting trade of a colony should conform to the conditions applicable to that coasting trade, but the practical result is unsatisfactory when in consequence seamen are entitled to receive higher wages if the wages given in the coasting trade differ from those of the trade in which they are serving, but the owners are not entitled to reduce the wages when the wages paid to the seamen are higher than those in force in the coasting trade. Moreover, as was pointed out in the course of the argument, it is pretty clear that the owners could undo the effect of paying higher wages by taking the extra amount paid from the wages which they pay in Victoria. The possibility of such evasions is recognised in the bill of the Australian Commonwealth in 1910, where it is sought to undo the effect by providing that if a deduction is made from the wages of a seaman earned out of Australia, or he is paid a lesser rate of wages outside of Australia than is usual because he is entitled to a higher rate of wages while the ship in which he served is engaged in the coasting trade, it shall be deemed that the seaman is not paid wages in accordance with the Act while the ship is so engaged in the coasting trade.

Such a provision is clearly necessary if the Act is not to be illusory, and as no such provision exists in the New Zealand Act, its effect will clearly be limited in operation. But on the other hand it is certain that provisions of this kind are difficult to enforce and that the most satisfactory solution will be some arrangement between the Commonwealth and New Zealand which would avoid conflicts such as those which have recently been raised. It might reasonably be agreed that a vessel registered in Australia should pay Australian wages as fixed by the Commonwealth Court of Conciliation and Arbitration while a vessel registered in New Zealand should pay the rates fixed by New Zealand Courts.

[1] The Commonwealth Navigation Bill adopts the principle of the Victorian Act, and thus a conflict between New Zealand and Commonwealth legislation will be inevitable.

JURISDICTION AGAINST FOREIGN STATES.

[*Contributed by* JULIUS HIRSCHFELD, ESQ.]

THE Russian Government brought an action against von Hellfeld, a German subject, in the Court of Kiao-Chao for the re-delivery of a steamer. Defendant brought a cross-action for the performance of a contract entered into between him and the Russian Government respecting the delivery of arms and ammunition which were to be carried by that steamer, during the Russo-Japanese War.

The Court nonsuited the cross-plaintiff. The Court of Appeal at Shanghai reversed this decision and referred the case back to the Court of first instance. The latter accordingly gave judgment against the Russian Government, which did not appear at the hearing, *in contumaciam*. On the strength of this judgment the Court at Berlin issued a garnishee order against the banking firm of Mendelssohn, with which Russia has a deposit account. The Secretary for Foreign Affairs in Berlin contested before the "Court for the decision of conflicts as to competency" the jurisdiction of the judicial authorities. The latter Court has just given its judgment, which I will briefly summarise:

It is a principle of international law that, apart from the case of immobile property, a foreign State is not subject to the ordinary Courts of a country, no matter whether such State had acted in the exercise of its sovereign nature, or in the capacity of a private person (*privatrechtliche Persönlichkeit*). This proposition implying that the nations cannot sit in judgment upon one another is a necessary corollary to the principle of the equality and independence of the States, and is recognised by the Judiciary of Germany, Austria, France, England, and the United States. From the fact that a Government brings an action in a foreign Court cannot be inferred that thereby it intends to waive its privilege and subject itself voluntarily to an action against itself by the defendant. Furthermore, even if it could be inferred from an adequate act that a submission to a judicial decision had taken place a submission to an execution would on that account not at all follow, judgment and execution being according to German law two distinct phases of procedure. Therefore, even if the judgment by itself were justified, it cannot take effect and must remain a dead letter. Under no circumstances can compulsion be exercised against a friendly State. So far the judgment.

The case had of course agitated the legal world of Germany, and important papers dealing with it were published. Four of them appeared in the Journal for International and Federal States Law (*Völkerrecht und Bundesstaatsrecht*). It will be interesting to note briefly what eminent jurists had to say on the subject.

(i) Professor Kohler of Berlin begins by confessing that he was formerly of the opinion of those lawyers who assume a dual nature in States, the one in which they appear in their sovereign aspect, the other where they act like other juristic persons; and that, though exempt from foreign jurisdiction in their former capacity, they were subject to it in the latter. That he had now reconsidered his position and come to the conclusion that it is impracticable, nay impossible, to draw this distinction; and that in any circumstances jurisdiction against a foreign State should be deprecated, where, as in the present case, it acted in the performance of a national duty. It would be altogether alien to the spirit of the mutual relations subsisting between sovereign States to hold otherwise. It was even doubtful if a State could subject itself to the jurisdiction of another and so divest itself of its inherent sovereign nature. Moreover, the fact that a foreign State brought an action against a person in his country could not be construed as implying a voluntary submission to a counter-claim by the defendant party for this reason, that the foreign State did not voluntarily elect to proceed in the Court in which he did, but was obliged to do so because it was the other party's *forum*. To think otherwise would be tantamount to depriving a foreign State of its remedy. It might perhaps be argued with some show of justification that where a single transaction had taken place involving obligations for each party the Courts might be entitled to consider all the issues and decide whether the private party should be held liable to perform his part of the contract without the State performing its own. And here the Court might perhaps pronounce for the latter performance as a *sine quâ non*. But in any other case such a pronouncement would not only be wrong but altogether null and void. Supposing however, for the sake of an argument, that a judgment against a foreign State could be passed, under no circumstances could it be conceived to be enforceable.

(ii) Professor Laband of Strasburg starts with the proposition that no State can issue orders against another friendly State and decree compelling measures for their execution. It followed that, not possessing these powers, it could not delegate such to its Courts. Modern international law was opposed to the theory of a dual nature of States. On the other hand, the Professor is of opinion that nothing prevents a State from voluntarily subjecting himself to the jurisdiction of another; without however admitting that such subjection can be found in an action being brought in a foreign country. A private party so attacked in his own *forum* can of course defend himself by proving that the plaintiff State has no claim, and the Court would if

satisfied declare this to be the case and nonsuit the plaintiff, but a pronouncement to that effect is essentially distinct from a decision on a cross-action by which a foreign State might be commanded to do an act.

(iii) A very clear paper is contributed by Professor Meili of Zurich, at the request of the Russian Government. He arrives at the same conclusions based on similar considerations. He is of opinion that the exercise of jurisdiction in cases of real property is only a confirmation of, not an exception to, the principle of non-jurisdiction in other cases, inasmuch as such property is to be regarded as part of the territory of the State in which it is situated and can therefore not be made subject to any other jurisdiction but that of such State. He argues that the proposals in the *Règlement du Droit International* only deal with *lex ferenda*, and maintains that though starting from different points of view their conclusions in the present case would agree with his own. He has not been able to discover a case in which the civil action of a private person against a foreign State, without the latter's consent, has been entertained by an English Court. In two decisions, relating to Peru, it was declared that the Court had no jurisdiction. He also refers to the practice and legislation of other countries, and has found everywhere the same attitude, with the only exception of a judgment passed in 1903 by the Court of Brussels against the Dutch State, and an *obiter dictum* in a German judgment (of December 12, 1905) of the Imperial Court, in which it was remarked that a subjection to the jurisdiction of a Court might be implied where a foreign State brings an action in such a Court. He concludes by saying that a judicial tort against the Russian State has been committed by the action of the Court of Berlin and that Prussia must be held liable to indemnification.

(iv) Professor von Seuffert of Munich takes on the whole the same view. He strongly repudiates the opinion of such writers who think that the Courts of a country may have jurisdiction but have no power of execution. According to him there is such a unity between those acts as precludes absolutely the former as much as the latter. A novel point in his paper is the question raised by him whether the issue between Hellfeld and the Russian Government belongs at all to the domain of private law, having regard to the fact that Hellfeld, a subject of a neutral State, contracted to deliver war material at a blockaded port, and whether therefore these contracts are not contraband contracts and altogether null and void.

All these considerations and arguments, in conjunction with the judgment, seem to lead us to these two general propositions: firstly, a contract between a State and a private person is legally binding only upon the latter party; secondly, an obligation entered into by a State cannot be enforced by the creditor. I believe such would likewise be the English law on the subject.

Now these relationships, I submit, are apparently so anomalous and so contrary to the spirit of the law that it is hardly appropriate to apply to

them legal terms such as "contract" and "obligation" and to treat them at all from a legal point of view.

Still, if we had here only to do with misnomers or false designations it would hardly be worth dwelling upon that fact. But owing to a loose and perverse terminology, partly due to carelessness in legislating, a conception of such instruments has crept into the sphere of our municipal law which, in my opinion, is decidedly erroneous. I refer to the case of *Speyer Brothers* v. *Commissioners of Inland Revenue*, (1907) 1 K.B. 246. There it was decided that a promissory note issued by a foreign State (United States of Mexico) was a "marketable security" within the meaning of the Stamp Act; essentially on the ground that, bills of exchange and promissory notes being by that Act treated as "securities," there was no reason why the instrument in question should not for the purposes of the Act partake of the same nature. Now I submit there is, apart from the nominal purport of the declaration on the face of them, no analogy in law between those two classes of instruments. For not only are bills of exchange and promissory notes recognised and enforceable forms of obligations, but they are also granted certain remedial and processual privileges, giving such creditors in some respects a position of security which others have not. State bonds do not in the eyes of the law embody obligations at all; and it is a mistake to force artificially into a legal category things which have no legal attributes, and to which organically they therefore do not belong. Of course it might be said that as a matter of fact States generally do pay their debts. But does that which is done for reasons of honesty or policy affect the legal aspect of the question?

REVIEW OF LEGISLATION, 1909.

TABLE OF CONTENTS.

PAGES

INTRODUCTION 308–310
Contributed by Sir Courtenay Ilbert, K.C.B., K.C.S.I.

FOREIGN:—

1. DENMARK 311–312
Contributed by P. Warner, Esq.

2. EGYPT 312–317
Contributed by W. E. Brunyate, Esq., C.M.G.

3. FRANCE 317–323
Contributed by M. René A. Faux

4. GERMANY 323–329
Contributed by Ernest J. Schuster, Esq., LL.D.

5. NORWAY 329–331
Contributed by P. Warner, Esq.

6. SWEDEN 332–333
Contributed by P. Warner, Esq.

7. UNITED STATES OF AMERICA—STATE LEGISLATION . . . 333–339
Contributed by R. Newton Crane, Esq.

BRITISH EMPIRE:—

I. BRITISH ISLES—
1. United Kingdom 340–350
2. Isle of Man—*Cont. by* His Honour S. Stevenson Moore . 350
3. Jersey . „ „ E. T. Nicolle, Esq. 350–351
4. Guernsey 351

II. BRITISH INDIA—*Contributed by* Sir Courtenay Ilbert, K.C.B., K.C.S.I.
1. Acts of Governor-General in Council 352–354
2. Madras 354–355
3. Bombay 355
4. Bengal 355–356
5. Eastern Bengal and Assam 356
6. United Provinces 356
7. Punjab 356

PAGES

BRITISH INDIA (*cont.*)—
8. Burma 356–357
9. Regulations under 33 Vict. c. 3 357

III. EASTERN COLONIES—
1. Ceylon . *Contributed by* Lewis Maartensz, Esq. . . 358–360
2. Hong-Kong „ „ C. Grenville Alabaster, Esq. . 360–363
3. Straits Settlements „ „ T. Baty, Esq., D.C.L., LL.D.. 363–365
4. Federated Malay States—
(i) Federal Council 366–367
(ii) Legislation of the Councils of the Four States.
Contributed by T. Baty, Esq., D.C.L., LL.D. 367–368
5. Mauritius . „ „ A. Herchenroder, Esq. . . 368–371
6. Seychelles 371–373

IV. AUSTRALASIA—
1. Commonwealth of Australia . *Cont. by* Herman Cohen, Esq. 373–374
2. New South Wales *Cont. by* N. Bentwich, Esq. . . . 374–379
3. Queensland . „ „ W. F. Craies, Esq. . . . 379–382
4. South Australia . „ „ A. Buchanan, Esq. . . . 383–386
5. Tasmania . . „ „ B. C. Ferrers, Esq. . . . 386–389
6. Victoria . . „ „ C. J. Zichy-Woinarski and W. Harrison Moore, Esqrs. 389–399
7. Western Australia 399–401
8. Papua . . . *Contributed by* W. F. Craies, Esq. 401–405
9. The Dominion of New Zealand
Contributed by Godfrey R. Benson, Esq. 405–408
10. Fiji . . . „ „ W. F. Craies, Esq. . . 408–411

V. SOUTH AFRICA—
1. Cape of Good Hope *Contributed by* The Attorney-General 411–413
2. Natal . . . . „ „ „ „ 414–416
3. Orange River Colony . „ „ Dr. W. R. Bisschop . 416–423
4. Transvaal . . . „ „ „ „ „ . 424–431

VI. WEST AFRICA—*Contributed by* Albert Gray, Esq., K.C.
1. Gambia 432
2. Gold Coast :
(i) Colony 432–433
(ii) Northern Territories 433
(iii) Ashanti 433
3. Sierra Leone 433–434
4. Northern Nigeria (Protectorate) 435
5. Southern Nigeria (Colony) 435–436

VII. EAST CENTRAL AFRICA—
Contributed by Albert Gray, Esq., K.C.
1. East Africa 436–438
2. Uganda 438–439

PAGES

EAST CENTRAL AFRICA (*cont.*)—

3. Somaliland 440
4. Nyasaland 440

VIII. SOUTH ATLANTIC—*Contributed by* Edward Manson, Esq.

1. St. Helena 441
2. Falkland Islands 441-442

IX. NORTH AMERICAN COLONIES—

1. Dominion of Canada 442–446
2. British Columbia 446–448
3. Province of Manitoba *Contributed by* H. Stuart Moore, Esq. 448–451
4. Province of Saskatchewan „ „ „ „ „ 451
5. Province of Ontario . „ „ J. S. Henderson, Esq. 451–457
6. Province of Quebec . „ „ Edward Manson, Esq. 457–458
7. Newfoundland . . „ „ „ „ „ 458–460
8. Bermuda . . . „ „ „ „ „ 460–461

X. THE WEST INDIES—

1. The Bahamas *Contributed by* Harcourt Malcolm, Esq. . 462–463
2. Barbados . „ „ Wallwyn P. B. Shepheard, Esq. 463–465
3. British Guiana „ „ Sir T. C. Rayner, A.-G. . . 465–470
4. British Honduras „ „ Wallwyn P. B. Shepheard, Esq. 470–471
5. Jamaica. . „ „ Albert Gray, Esq., K.C. . 471
6. Trinidad and Tobago „ Wallwyn P. B. Shepheard, Esq. 472–476
7. Windward Islands :
   (i) Grenada *Contributed by* Edward Manson, Esq. . . . 476–477
   (ii) St. Lucia „ „ Wallwyn P. B. Shepheard, Esq. . 477–478
   (iii) St. Vincent „ „ „ „ „ „ . 478–479
8. Leeward Islands—*Contributed by* T. S. Sidney, Esq.
   Federal Colony 479–480
   (i) Antigua 480
   (ii) Dominica 480
   (iii) Montserrat 480–481
   (iv) St. Christopher and Nevis 481
   (v) Virgin Islands 481

XI. MEDITERRANEAN COLONIES—

1. Gibraltar . *Contributed by* Albert Gray, Esq., K.C. . 481–482
2. Malta. . „ „ „ „ „ . 482
3. Cyprus . „ „ Stanley Fisher, Esq. . . 482–485

REVIEW OF LEGISLATION, 1909.

INTRODUCTION.

[*Contributed by* Sir Courtenay Ilbert, K.C.B., K.C.S.I.]

The Review of Legislation for 1909 begins with some important reports on foreign laws.

The Egyptian legislature has been reorganising the constitution and procedure of the Courts, civil, criminal, and religious, has been remodelling the provincial councils on a more popular basis, and has been extending their powers. It has also imposed restrictions on child labour in factories.

France has been trying an interesting experiment on lines familiar to students of legislation in the United States and in British dominions beyond the seas. A law of 1909 gives power to constitute a *bien de famille* consisting of a house and land occupied and cultivated by a family. This is to be incapable of seizure for debt, but may be alienated under conditions safeguarding the interests of the family. Homestead Exemption Acts are said to have begun in the United States in 1839. In Germany, under the name of *Heimstatt*, has been created a special class of rural estates which cannot be charged with anything but annuities or rents.

Another French law of 1909 is for the protection of child-bearing women. It enables a woman to cease work for two months after child-birth without incurring any liability for breach of contract.

Dr. Schuster's review of German legislation extends over the years 1908 and 1909. A statute of 1908 generalised the law of private insurance contracts and superseded the legislation of the several States on that subject. Another statute of the same year generalises for the Empire the provisions which regulate the formation and constitution of societies for political purposes and the right of public meeting. A third modifies the stringency of the provisions against *lèse-majesté*, provisions under which an incautious word or gesture, and even the omission to rise or to uncover the head, might be punished as an insult to a ruling sovereign, or to a member of his family.

A well-intentioned Act was passed in 1896 for the suppression of gambling on the stock exchange, but produced no useful effect. It was repealed in 1908 and was replaced by provisions which are less severe, and may possibly prove more effective.

On the other hand the statute of 1896 for the prevention of unfair

competition has been extended and made more stringent by a statute of 1909. A person who, for purposes of competition, does any act violating the rules of decent conduct—an elastic expression—may be restrained by injunction and made to pay damages. Particular forms of "unfair competition" are made the subject of special provisions. They include misleading advertisements of "bankrupt stock," "clearance," and "season" or "stock-taking" sales. There is also a new clause aimed at "secret commissions." As Dr. Schuster observes, it remains to be seen whether the new law will be more effective than the old.

Norway has passed a law permitting divorce on grounds much wider than those admissible in England. Specific grounds of divorce are enumerated, and divorce by agreement is permitted, but not until attempts of reconciliation have been made before a special commission of arbitration. Norway has also found it necessary to pass a law regulating the grant of concessions of waterfalls, and of mines and other stationary property.

Mr. Newton Crane's interesting account of legislation in the United States discloses, amid great variety of laws, two main streams of tendency : a strong desire to remove or abate the defects of local, and especially of municipal, government, and a strong desire to improve the conditions of physical health by measures of restriction, supervision, and prevention. To the former motive is due the Massachusetts Act, which arose out of the Commission that for two years investigated the misgovernment of Boston. To the second motive may be ascribed the temperance legislation which has recently made such strides in all parts of the United States, and the numerous tentative measures for the prevention of disease by providing for inspection of food and sanitary appliances, by establishing homes and hospitals for the isolation of tuberculous patients, by the organisation of bureaus of research, and by the administration of preventive measures in all cases of communicable disease. The United States can no longer be described, if they ever were justly described, as the chosen home of rampant and unrestrained individualism.

The legislation of the United Kingdom for 1909 comprised several important Acts, and was characterised by one great omission. Parliament passed a comprehensive Housing and Town Planning Act, amended the Irish Land Purchase Law, established Labour Exchanges and Trade Boards, and altered the mode of taking oaths, but failed to pass its annual Finance Act. The Budget of 1909 was not sanctioned until 1910.

The Indian Councils Act of 1909 was passed in England but related to India. Among the Indian Acts of the same year perhaps the most useful was a new insolvency law for the three Presidency towns and for Rangoon, superseding the Act which was passed in England in 1848, and which was not in conformity with the provisions of modern bankruptcy law.

The legislation for the Straits Settlements reminds us that this dependency now includes the island of Labuan, off the coast of Borneo, and that

a Federal Council, with legislative powers, has been set up for the protected Malay States.

The Commonwealth of Australia has enabled electors to vote by post where personal attendance at the polling booth is made difficult by illness or distance. It has also passed a general Bills of Exchange Act for the whole Commonwealth.

The legislatures of the several States were actively at work during the same year, and passed many laws relating to land, mining, and other topics. Queensland has altered its law as to payment of members, and gives the leader of the Opposition £500 a year instead of the normal salary of £300.

In South Africa the Cape was concerned with labour colonies, Natal with native administration, and the Orange River State with agriculture and irrigation, whilst the Transvaal established a department of labour.

In Sierra Leone human leopards and alligators, and in East Africa witchcraft, were still engaging the attention of the legislatures. East Africa was also protecting big game and regulating the sale of intoxicating liquors.

The legislature of the Falkland Islands was protecting penguins and making education compulsory in Port Stanley.

The Act passed by the Dominion of Canada for regulating immigration deserves careful study. The Dominion legislature also passed a law for the investigation of trade "combines." There was much legislation in the Provinces, especially in Ontario. Newfoundland authorised the admission of women to all branches of the legal profession.

British Guiana has altered the status of carrion crows. Formerly they were protected as scavengers, now they are to be destroyed as disseminators of disease.

FOREIGN.

1. DENMARK.

[*Contributed by* P. WARNER, ESQ.]

THE principal laws introduced in Denmark in 1909, and having any bearing on foreign comparative legislation, are:

International Arbitration.—Ratification of convention of compulsory arbitration between the United States of America and Denmark, and between Norway and Denmark, by which agreement they are compelled to put any differences arising between the said countries before The Hague Tribunal for settlement, in so far as the difference does not concern the independence or integrity of the respective countries.

Designs.—Law on protection in Denmark of patterns and brands of the Australian Commonwealth, and the British possessions of Trinidad and Tobago, by which law the said countries are put on the same footing as other Powers according to a previous convention.

Chartered Accountants.—A new, and for Denmark important, law was passed in the Law of Authorised (Chartered) Accountants. Previously there were no rules for and practically no supervision of the business of accountants; the new law sets out rules and regulations for passing a special examination and getting a licence. To get the latter the following conditions must be complied with:

(*a*) The applicant and candidate for a licence of a chartered accountantship must have been employed with an authorised (chartered) accountant for at least three years after having completed his eighteenth year, and during this time the candidate must have actually taken part in the general work of an accountant.

(*b*) The applicant must then pass a special examination, the examining commission being appointed by the Minister of Commerce. The applicant is to be examined in "knowledge of general commerce" (and in this connection his knowledge of commercial and maritime laws is to be tested) and in "knowledge of accounts." The examination is to be held both verbally and in writing, and it may be augmented by a supplementary examination in "knowledge of goods," also the candidate's knowledge of the valuing of estates with belongings (taxation).

In s. 5 of this law it is stated that if a chartered accountant has by sentence been proved guilty of an act which in public opinion is considered dishonourable then his licence shall be withdrawn. This step is also to be taken when a chartered accountant's business comes under the bankruptcy laws, and his licence is then not to be given him back unless he produces a statement from all his creditors to the effect that he has satisfied them with regard to his liabilities.

Sailors.—A law was passed to safeguard the interests of sailors in the Law of Insuring Sailors.

Weights and Measures.—A law was passed making it compulsory to settle all affairs with the Government departments in accordance with the "Metric System." This means the abolition of the old system of weights and measures and the general introduction of the "Metric System."

2. EGYPT.

[*Contributed by* W. E. BRUNYATE, ESQ., C.M.G., *Khedivial Councillor.*]

Laws of general public interest—27.

Agriculture.—Law No. 21 prohibits the importation of cotton-seed into the country, as a protection against the introduction of cotton-pests. Law No. 27 is directed against one of the most destructive of the existing pests—the boll-worm. All cotton-stalks and certain other plants on which the boll-worm feeds are to be pulled up or cut down, so as to prevent their sprouting, before December 31. Any plants not so treated, or which are found sprouting before the end of March, may be dealt with by the local authorities at the expense of the landowner. The village authorities are bound to report breaches of the law. At the request of the Legislative Council, all penalties were omitted from the law.

Civil Procedure.—The expert witness of British Courts of Justice finds his counterpart in Egypt in the "expert," who is a quasi-official of the Court and is appointed to report for the guidance of the Court on technical matters arising before it. Law No. 1 attempts to control the experts practising before the Native Tribunals. A Commission is appointed at each Central Tribunal to deal with their admission to the roll, their classification, and their discipline—the punishments being suspension and striking off the roll. The number in each category is to be limited, and, so far as possible, they are to be employed in turn. Power is reserved to employ experts not on the roll for special reasons. There are somewhat elaborate provisions intended to secure reasonable despatch in the conduct of *expertises* and to restrict the power of judges to accord excessive fees: it will be interesting to see how strictly they are applied.

Commercial Law.—Laws Nos. 23 and 24, which modify, in identical

terms, the Native and Mixed Codes of Commerce, arose out of a conflict of judicial opinion as to the validity of gambling transactions in stocks and shares and in futures on the Cairo and Alexandria stock exchanges and the Alexandria produce exchange. The solution adopted is that of State regulation of exchanges, such transactions being declared valid if carried out on an authorised exchange in accordance with its regulations, and invalid in all other cases. General regulations are to be issued by the Government, with the approval of the Mixed Court of Appeal; and one or more Government Commissioners are to be appointed for every authorised exchange, side by side with the Committee of Management, to see to the observance of the regulations.

Criminal Law.—Law No. 15 provides for the placing under a special police supervision of persons "who are recognised by common report as habitually guilty of offences or threats directed against persons or property." Such persons are to be tried by a Commission composed of the Governor of the Province (Mudir), who presides, the President of the Native Tribunal, the local representative of the Public Prosecutor's Department, and two notables. Persons found guilty may be sentenced to not more than five years' police supervision and, in default of finding security for good behaviour, may be ordered to undergo such supervision in a special settlement, which has been established, in fact, in the Oasis of Kharga. The Minister may refer any decision of the Commission for revision by a Committee composed of himself, the President of the Native Court of Appeal, and the Public Prosecutor. A convicted person who has never been convicted of a crime by the ordinary tribunals may appeal to the same Committee against a decision requiring him to find security for good behaviour. The Law contains a provision that when a person accused of murder, attempted murder, or one of a number of other specified offences is acquitted by an Assize Court, in default of sufficient evidence, the Court may, if satisfied that the accused falls within the definition above set out, sentence him to police supervision as above defined.

Law No. 16 extends the power of imposing restrictions upon the residence of persons sentenced to ordinary police supervision, and provides for their being required to give security for good behaviour in certain events in manner above described. Law No. 17 repeals and re-enacts the law as to vagabonds, omitting therefrom the provisions as to suspected persons.

Factory Legislation.—Law No. 14 regulates the employment of child-labour in cotton-ginning factories, the work in which is of a seasonal character and is not infrequently carried on continuously during the busy season both day and night. The employment of children under nine years of age is prohibited, and no child under thirteen years of age is to be employed unless provided with an official certificate that he is physically fit for work. No child is to be employed at night (from 7 p.m. to 5 a.m.), or for more than eight hours a day, or to spend more than twelve

hours a day in or about the factory. Children are also excluded from rooms in which processes are carried on which give rise to excessive fluff. When children are employed in shifts, full details have to be reported to the authorities and a notice of the shifts has to be placarded in the factory. The Minister of the Interior is empowered to extend the application of the Law to other industries. The practical effect of the Law has been the discontinuance of the employment of children under thirteen.

Finance.—Law No. 26 is the annual Budget.

Irrigation.—Law No. 20 modifies in a minor respect the penalties for offences connected with irrigation works.

Judicature.—Law No. 11 transfers the judicial powers of the Governor of El Arish to a summary judge to be delegated for the purpose. (A summary tribunal of the ordinary type was instituted at El Arish early in 1910, and the Law was repealed.)

Local Government.[1]—Law No. 22, the most important Law of the year remodels the provisions of the Organic Law of 1883 with respect to Provincial Councils.

Under the Organic Law, the Councils have consisted of members few in number (varying from three to eight), possessing a high property qualification, and elected upon a general list for the Mudiria by electoral delegates chosen, one for each town or village, by universal manhood suffrage. They would appear to have been intended to act as advisory bodies to the Mudir; but owing to various reasons—of which the principal one was the fact that they met only when summoned by decree—their influence has been practically *nil*.

As regards composition, the new Law provides for the election of two representatives from each Markaz (sub-division of a Province) by the village delegates of the Markaz. The number of members is, in all cases, considerably increased, ranging from six to twenty. The high property qualification (payment of land or house tax of £E50 a year) is retained, as serving ultimately as the qualification for election to the Legislative Council; but, as a premium on education, it is reduced to £E25 in the case of persons holding higher education certificates. It is provided, on the suggestion of the Legislative Council, that candidates must be resident in the Markaz itself and must possess the necessary qualification in the Markaz.

The Mudir remains *ex-officio* President of the Council: there are no other *ex-officio* members, but provision is made for the attendance of public servants at meetings of the Council and its committees at which matters connected with their Departments are discussed.

The period for which members are elected remains that of six years; one representative of each Markaz retires by rotation every third year.

The times of meeting of the Councils are left to be governed by their

[1] Portions of this summary are taken from the Annual Report of H.B.M.'s Agent and Consul-General.

standing orders. The President has also a general power to summon meetings, and is bound to do so upon the requisition of one-third of the members.

As regards specific powers, the consent of the Council is required to by-laws made by the Mudir and to the application within the Province of by-laws made by Ministers. Public markets are to be authorised by it; it is to fix the number of village watchmen (gaffirs) in each village (subject to the approval of the Ministry of the Interior) and to determine their pay; and it takes over the powers of the Minister of the Interior as to the authorisation and suppression of outlying hamlets (ezbas). Finally, the Councils are created local authorities in connection with elementary vernacular education and trade schools, a matter which has aroused considerable interest in recent years, and for which considerable endowments have been provided by local notables. Subject to the general control of the Ministry of Education, the Councils can establish or take over schools, and can encourage existing schools which submit to their regulations by grants in aid. Power is given to appoint managing committees for schools or groups of schools; and not more than four persons can be co-opted as additional members of the Council for educational purposes. At the request of the Legislative Council, it is provided that of all sums raised for educational purposes 70 per cent. shall be devoted to education of the type above described and 30 per cent. to more advanced education.

The financial powers of the Councils are somewhat obscure. The provision of the Law of 1883 that the Councils may vote contributions for purposes of public utility within the Mudiria, subject to the approval of the Government, is reproduced; and it is further provided that up to an amount equal to 5 per cent. of the local assessment of the Province to land-tax that approval shall not be withheld; but the possible subject-matters for taxation do not appear to be defined.

In addition to the specific powers above detailed, the Councils are given a general power to make representations as to the general needs of the Province.

Finally, they may be consulted generally by Ministers or by the Mudir, and must be consulted as to a large number of specific matters, such as changes of administrative or judicial districts, the modification of village boundaries, the creation of local commissions for towns within the Province, the annual irrigation programmes of new works, clearances, and rotations, etc.

Savings are inserted in respect of all matters finally dealt with by local commissions within the Province.

Considerable amendments were introduced into the Law as the result of recommendations by the Legislative Council: whether the effect of some of them was fully realised is open to doubt.

Mehkemehs.—Law No. 4 promulgates a new tariff for the Muhammadan religious Courts. The extreme formalism of those Courts sufficiently appears from the fact that, although considerable simplification has been effected,

the fees for documents issued by or registered with the Cadi, other than judgments in contested cases, are dealt with under 120 heads.

Law No. 25 is a first instalment of the reorganisation (completed in 1910) of the same Courts on lines more or less similar to those of the Native Tribunals, with a Supreme Mehkemeh (corresponding to the Court of Appeal) in Cairo, eight Central Mehkemehs taking important cases in first instance and less important cases in appeal, and a single Cadi, delegated from the Central Tribunal, sitting in each District Mehkemeh. The competence of the District Mehkemehs is somewhat enlarged, but the details are unintelligible without a knowledge of the technical terms of Muhammadan law. The tendency has hitherto been for Cadis to regard themselves as holding their respective posts by individual delegation from the Sovereign, in his religious capacity; the new Law, which provides that a general delegation shall be implied by the fact of their appointment, treats them, rather, as members of an organised judicial service of the familiar continental type.

Police.—Law No. 19 authorises the engagement of village watchmen (gaffirs) on contracts for a period of years, and provides that men so engaged shall be subject to military discipline.

Prisons.—Law No. 7 authorises the transfer from convict prisons to ordinary prisons of convicts who are unfit for convict labour.

Public Service.—Law No. 5 is a new Pension Law for members of the civil service. The principal changes introduced are that the maximum pension is increased from £E600 to £E800; that daughters' pensions continue until death or marriage; that a widow no longer loses her pension when her children attain a prescribed age or marry; and that menial and other non-pensionable Government servants who are retired for ill-health or old age are granted a gratuity at the rate of half a month's pay for each year of service, with a maximum of one year's pay. To the grounds giving rise to pension or gratuity is added "retirement by special decision of the Council of Ministers," which would appear to be intended to legalise a power already exercised by the Council but for which there exists no legislative authority. The old Law provided that questions of interpretation might be referred to the Council of Ministers for its decision; it is now expressly laid down that such decision shall have the force of law.

Law No. 6 repeals the provisions under which the value of the primary and secondary certificates of the Ministry of Education as qualifications for admission to the public service was limited in point of time. Law No. 9, which is, perhaps, the first legislative recognition of "the failed B.A.," differentiates between the simple holder of the primary certificate and the unsuccessful candidate for the secondary certificate who has acquitted himself with a carefully prescribed degree of credit.

Two Laws (Nos. 8 and 13) were found necessary to provide for the replacing of the Advocate-General on Councils of Discipline, that office having been abolished.

Law No. 10, which places the appointment of the subordinate staff of the Native Tribunals and the Department of the Public Prosecutor in the hands of the Ministry of Justice, is the natural complement of the gradual transformation of the Central Tribunals, which the Law of 1883 treated as largely independent of each other, into a uniform judicial service.

Representation of the People.—Law No. 3 provides for the admission of the public to the sittings of the Legislative Council and of the General Assembly. Law No. 18 provides that the Legislative Council shall sit from November 15 in each year to the end of May in the following year, and at other times if specially summoned. No session is to be closed until the Council has reported on all matters referred to it by the Government for opinion. Hitherto the Council has met in alternate months throughout the year.

Taxation.—Law No. 2, passed in connection with the scheme for the sewerage of Cairo, increases the house-tax in that city from one-twelfth to one-tenth of annual rental value. Power is taken, subject to the consent of the Powers, to effect the like increase in any other town which may be sewered. Law No. 12 extends the boundaries of the city of Cairo for the purposes of house-tax.

3. FRANCE.

[*Contributed by* M. René A. Faux, *Avocat., Paris.*]

Workmen's Compensation.—Law of May 29-30, 1909, modifying the quantum of the taxes to be contributed to the security fund ("fonds de garantie") referred to in Art. 25 of the Law of April 9, 1898, and in Art. 4 of the Law of April 12, 1906, concerning Workmen's Compensation.

In accordance with this Law, a decree issued annually, on the proposal of the Board of Trade and the Treasury Board, will determine, for the following year, the quantum of the taxes which have to be paid by the employers, as per Art. 25 of the Law of April 9, 1898, and Art. 4 of the Law of April 12, 1906.

This proportion within the limits of the maximum referred to by Art. 25 of the above-mentioned Law of 1898 will be based on the one hand on the expenses of every kind incurred by the security fund in the course of the foregoing year and, on the other hand, on the total output of the taxes collected during the same year. This combination has the merit of taxing as precisely as possible the present generation for the part which falls to its share.

Crédit Maritime (Maritime Credit).—Law of June 18-20, 1909. The main object of this Law is to remedy the insufficiency of previous legislation (Law of April 23, 1906), and to complete the organisation of "Crédit Maritime." It is inspired by the dispositions regulating the Crédit Agricole (Agricultural

Credit). It creates local branches of Maritime Credit, which will discount drafts drawn by members of the corporations and endorsed by those corporations so as to have the three signatures required by banking institutions, and it authorises these counters to make advances repayable within ten years' time to local companies. These branches have for object to facilitate to members of local corporations the operations which refer to the exercise of their business. In fact, they are the intermediates between the State and these corporations.

The usefulness of the advances made by these branches is unquestionable, permitting as they do the renewal or transformation of working material, etc., to bring it up to the level of the previous year's improvements.

Constitution of a "Bien de famille insaisissable" (or family property whereon it is impossible to levy distraint).—Law of July 12-13, 1909. This Law has for object to create and organise under the name of "bien de famille" an unseizable real estate, consisting of a house, or a house and lands, occupied and cultivated by a family (Arts. 1 and 2).[1] The value of this estate must not in the first instance exceed 8,000 francs, or about £320 (Art. 2), but any increase in its value will not be a cause of forfeiture of the advantages resulting from its own peculiar nature (Art. 4).

The "Bien de famille" can be established only upon a joint tenancy, free of any charges or mortgages. However, mortgages by right of law are not an impediment to its constitution, and retain their effect (Art. 5).

The rights of the creditors of the party creating this "bien de famille" are preserved; the deed of constitution being published by being posted, for three months, at the Tribunal of Justice of Peace (similar to English County Court), or at the town hall of the place where the estate is located, and by two insertions, at a fortnight's interval, in a paper of the district authorised to publish legal notices. During these three months, the creditors are entitled either to enter their claims which are inscribed on proper registers for that purpose, or to form an opposition to the constitution of the "bien de famille" (Art. 7).

The persons capable of constituting a "bien de famille" are: during coverture

(*a*) The husband on his own property, on those of the "communauté" (joint property of the marriage) or on such of his wife's property the administration whereof is vested in him;

(*b*) The survivor of the marriage, or the divorced one, should there be any child who shall not have attained his majority;

(*c*) The grandfather and grandmother who have taken charge of their orphan grandchildren; the father or the mother of a natural child that they have legally acknowledged, provided they have no

[1] This "bien de famille" may also be constituted in favour of foreigners, subject to the regulations of Art. 13, Civil Code.

legitimate issue, or of a legally adopted child; in a word, any person in favour of another, provided that this latter be capable to constitute a "bien de famille."

Art. 6, par. 1, provides that the constitution shall be made by way of a notarial deed or by will, or by deed of gift.

Art. 10 declares the property unseizable, as well as its produce, even in case of failure or bankruptcy, except by creditors who have entered their claims according to the regulations of Art. 7. It cannot be mortgaged or sold with right of redemption.

However, its produce may be attached or distrained upon, for the payment of:

(*a*) Debts arising from condemnations by a criminal, correctional, or police court;

(*b*) The taxes and premiums of fire insurance concerning the property;

(*c*) Debts for alimony.

This unseizability characterises the "bien de famille." The owner thereof cannot renounce or abandon the privilege under any circumstances.

After a long discussion, it has been decided that the "bien de famille" can be alienated. It seemed strange at first sight to make this property unseizable on one hand, and on the other, to make it possible that it might be alienated, because people who will not be able to find money, as they will not be allowed to borrow on their estate, will undoubtedly sell it, and then their family will not enjoy the protection of the law. But above this, there is a more important principle, which is the following:

Inalienability is contrary to the principle of the free circulation of property, which is a question of public order. For this reason the "bien de famille" can be alienated, but subject to certain conditions established with the view of safeguarding the interests of the family. For instance, if the owner is married, or if he has children who have not attained their majority, the alienation is subject, in the first case, to the consent of the wife given in presence of the Justice of the Peace, and in the other case to the authorisation of the family council ("conseil de famille"), who will not grant it unless it is to the advantage of the children.

Art. 12 to Art. 15 secure the preservation and substitution of the "bien de famille" in case of legal expropriation for public improvements, of voluntary substitution of one estate for another or of total or partial destruction.

Arts. 17, 18, and 19 are among the most important of the law, because they regulate the utmost duration of the "régime de faveur" (system of favour) instituted by this Law, and they also regulate the destiny of the "bien de famille" in the three hypotheses which may arise at the time of the dissolution of the marriage.

Art. 17.—The survivor of the marriage is owner of the "bien de famille." In this case the unseizability continues to exist in favour of the said survivor,

whether there be any children or not. This article does not provide the contingency of a divorce. In the absence of any formal regulation we think the following system ought to be adopted: (*a*) if the divorced person has no children, Art. 17 does not apply; (*b*) if there are infant children, the unseizability subsists in virtue of Art. 304, Code Civil.

Art. 18.—The survivor of the marriage is not owner of the "bien de famille." If there are infant children at the time of the death of the parent proprietor of all or of any portion of the "bien," the Justice of the Peace may, either at the request of the surviving parent, of the legal guardian of an infant, of a child who has attained its majority, or at the request of the family council, prescribe the prorogation of the joint possession until the majority of the youngest.

Art. 19.—The survivor of the marriage is co-proprietor of the "bien de famille." The law grants him a right of pre-emption on the property. He may claim the possession thereof by paying the price after valuation.

I have thought it advisable to give a rather detailed report of this Law, perhaps a little too long for a mere review of the laws of the year, because it has a very important social character. It is destined to attach the family to its home and to prevent it from becoming divided. It appears to be the best possible measure of protection in favour of small properties. It binds the family to its real property; the solidity of the one depends upon the solidity of the other.

The idea of constituting a "bien de famille" originated in the United States, where the homestead exemption has been in force since 1839. In Europe nearly every State is in favour of the small family property. In England there is the law of 1887, which had for its object to multiply allotments, and the law of 1892, which authorises the creation and guarantees the conservation of small agricultural estates sufficient to keep busy and to supply a family. In Germany has been created a special category of rural estates which the proprietors cannot charge or encumber with anything but annuities or rents. Everywhere the same movement appears; Governments modify their legislation as to land with the object of making small property accessible to the working classes.

Appeal for Misdemeanour.—Law of July 13–14, 1909, modifying Art. 206 (Code Instr. Crim.).

Art. 206, Code Instr. Crim. is modified as follows:

Notwithstanding appeal, the accused who is acquitted or condemned either to prison with "sursis,"[1] or to a fine, will be set at liberty directly after the judgment. So will an accused condemned to prison, when the duration of his term of imprisonment has expired before the expiration of the time allowed to the Procureur-Général (somewhat similar to the Public Prosecutor) to enter an appeal.

[1] A formal condemnation not enforced; something similar to English "binding over to come up for judgment."

This modification is due to the anomaly that existed with regard to prisoners sentenced with "sursis." Before the Law of March 26, 1891, Art. 206 read as follows: "In case of acquittal, the accused will be immediately set at liberty, notwithstanding appeal"; but this could only apply in the case of an acquittal. Thus the prisoners sentenced with "sursis" found themselves in this situation, that when they had been arrested, they could not be set at liberty before the expiration of the delay for appeal, *i.e.* ten days, or even two months, if one considers the special delay particular to the Public Prosecutor, as per Art. 209, Code Instr. Crim. So that, for instance, a person condemned to two days' imprisonment with "sursis" would have been kept in gaol during two months from the date of the judgment.

This new Law is destined to put an end to this state of things.

Extradition.—Law of July 14-16, 1909.

This Law is a formal approval of the Additional Convention on Extradition between Great Britain and France, signed in Paris, October 17, 1908.

To fully appreciate the object of this Law, it is necessary to give a short history of this important question.

By Art. 2 of the Extradition Treaty between Great Britain and France, August 14, 1876, neither of the contracting Powers could entertain a demand for extradition concerning her own subjects. This clause, which is the basis of French Law on Extradition, does not prevent the tribunals from punishing crimes or offences committed in foreign territory. The French jurisdiction is competent to try and pronounce judgments in such cases. But English legislation has no similar dispositions; its character is substantially territorial; it does not provide for a British subject being taken before a Court of the United Kingdom for infractions committed by him in another country. If, on the other hand, a Treaty of Extradition does not authorise the handing over of such an offender, the man escapes any effective punishment.

In 1878, the British Government appointed a Commission to study these questions of extradition, and, as a result, Conventions were passed between Great Britain and Spain, Russia, and Austria, enabling the former to hand over her own subjects without, however, giving her any right to obtain reciprocity from the High Contracting Parties. On October 17, 1908, an additional Convention was signed in Paris, modifying Art. 2 of the Treaty of August 14, 1876, stipulating that each of the High Contracting Parties will be at liberty to refuse to the other the extradition of her own subjects. This new Convention does not change anything on the French side, but it enables the British Government to secure, by the extradition of its own subjects, the punishment which it cannot carry out itself.

Apropos of the question of extradition, a very interesting point may be raised:

Art. 9 of the Treaty of March 7, 1815, concluded between France and England, has an important exception to the principle that France does not hand over her subjects for crimes or offences committed in a foreign country.

In fact, according to Article 9, in India the French authorities are bound to surrender, on a mere demand of the British Government, all individuals, including French subjects, wanted for infractions committed on British territory, and who have sought a refuge in French possessions. Several times the French Government has been approached, and even requested, by several members of the two Houses of Parliament to have this exception abolished. The last attempt of this kind was refused by M. Pichon, the present Minister of Foreign Affairs. So things stand in the same position, and yet it is a very strange situation. Although it did not quite come under the *exposé* of this Law, it seemed to me it would be interesting to recall this little anomaly.

Divorce; Separation.—Law of July 14-16, 1909, by virtue of which Art. 247 of the Civil Code will in future rule the procedure of separation.

Art. 1.—The following provision is introduced in the Civil Code, where it will replace the former Art. 308, abrogated by the Law of July 27, 1884:

"Art. 308.—Art. 247 of the Civil Code is applicable to the procedure of judicial separation."

In the matter of judicial separation as well as in the matter of divorce judgments or orders by default may be "opposed." But Art. 247 of the Civil Code makes, with regard to this part of divorce proceedings, some regulations that are peculiar to these proceedings, and that vary according to whether the judgment or order has been served on the respondent or not. If it has been, the respondent is entitled to one month for entering his opposition; if it has not been, the judgment or order must be published in the papers, and the opposition can be entered within eight months from the date of last publication. When this delay has expired, the judgment or order becomes final.

It is not the same for judicial separation, which is regulated by common law principles (Art. 198, C. Pr. C.), *i.e.* that an opposition can be entered against a judgment so long as this latter has not been enforced. But, supposing the husband when respondent has entirely disappeared, and there is not the slightest chance of tracing his whereabouts, how can this judgment be enforced? The result is that, as the judgment cannot be enforced, it may be opposed for ever. This used to put the wife in a very difficult situation, as she could not be looked at as definitely separated.

Fortunately this Law remedies this state of things.

Marriages Celebrated in France and in Mexico.—Law of July 16-18, 1909, which ratifies the Convention passed at Mexico on June 3, 1908, between France and Mexico, to guarantee the validity of the marriages of people under their respective jurisdiction, celebrated in the presence of Diplomatic and Consular Agents.

French Consuls in Ethiopia.—Law of November 16-18, 1909.

This Law confers the jurisdictional competence and the judicial powers provided for in the Edict of June 1778, upon French Consuls in Ethiopia.

Contract for Service.—Law of November 27-28, 1909.

This Law was passed for the benefit of women in employment at the time of maternity, and it provides that they shall be entitled to cease work for two months in order to enjoy the repose required by their condition, without the risk of losing their employment.

Up to the passing of this Act, French law protected the child, but the woman in her quality of mother was entirely overlooked. And, after all, can there be anything more necessary than legal protection for a woman at the time of her maternity?

In nearly all European countries, laws have been passed providing for this repose. Bulgaria, France, Russia, and Sweden were the only exceptions, and now France is free from this reproach.

Henceforth the woman worker, knowing that she is protected by the law of her country, will dare to take the rest to which she is entitled. On the other hand, her employer will, at last, consider himself bound to encourage her to take it by this legal recognition of its necessity.

I cannot do better than quote the single article which forms this Law:

"Art. 1.—The stopping of work by a woman during eight consecutive weeks, within the period which precedes and follows her delivery, shall not be a cause for breach of contract by the employer, and that, subject to damages, in favour of the woman. The latter must notify the employer of the reason of her absence."

Any convention contrary to the provisions of Art. 1 is null and void, *ipso facto.*

The woman shall be entitled to "assistance judiciaire" (right to sue *in forma pauperis*) in Courts of the First Degree.

4. GERMANY.

[*Contributed by* Ernest J. Schuster, Esq., LL.D.]

General Observations.—The labours of the German Imperial Legislature during the years 1908 and 1909, and during the present year, have in part been devoted to the statutes to which detailed reference is made below, but much time has also been given to the preparation of new enactments on other matters. The draft of the "Reichversicherungsordnung," by which the whole law of compulsory insurance against sickness, accidents, and invalidity will be consolidated and re-modelled—a giant Bill containing 1,754 sections—has for some time been before the Federal Council, and has, since the spring of the present year, occupied the Reichstag; the draft of a new Code of Criminal Procedure is also under consideration. The preparations for the new Penal Code have not as yet been completed, but they are progressing.

If the Uniform Bills of Exchange Law, which has formed the subject of a Conference at The Hague, is finally settled at the adjourned meeting in September 1911, it will form another important addition to the German Imperial Statute Book.

The law as to cheques, passed in 1908, is not referred to below, as it has been fully dealt with in a former number of this Journal (No. XIX, pp. 79-83).

1908.

Statute relating to Insurance Contracts.—The German law of insurance is dealt with in a number of statutes. The statute as to private insurance of 1901 regulates the precautions required to be taken for the safety of the policy-holders on the establishment of insurance companies, and provides for the appointment of a Government Board by which they are controlled. The laws as to compulsory insurance against sickness, accidents, and invalidity (which, as mentioned above, will shortly be consolidated and amended) are at present embodied in a large number of complicated enactments. The law as to marine insurance is contained in ss. 778-900 of the Commercial Code; the Civil Code deals with life insurance for the benefit of a third party (s. 330), and contains certain rules as to contracts providing for annuities (ss. 759-61). In addition to this there existed, prior to the coming into force of the above-mentioned Act, a variegated State law on the same subject, which was expressly upheld by Art. 75 of the statute introducing the Civil Code.

The new enactment does not interfere with the previously existing Imperial law, but (subject to specified exceptions enumerated in ss. 191-3, and subject also to the exception in respect of Bavaria referred to below) it revokes the existing State law. In so far as it gives a statutory construction to the conditions usually set out on insurance policies, it does not in fact contain new law, but maintains the law previously established by judicial decisions.

From the point of view of the student of the methods of federal legislation the provisions contained in Art. 2 of the statute introducing the new Insurance Law are of interest. Under these provisions the rules relating to the insurance of immovables are not applicable to Bavaria unless they receive the special sanction of the Bavarian Government. This concession to local autonomy shows that the subdivision of the German Empire into separate States is of much greater significance than is generally assumed.

The first subdivision of the first part of the new enactment contains general rules dealing with the form of insurance contracts and the effect of provisions as to forfeiture, prescription, and other matters; the second subdivision deals with the duty of the insured to make full disclosure,

and the right of the insurer to give notice to determine the contract in the event of an unexpected increase of the risk; the third subdivision regulates the payment of premiums; and the fourth the rights and powers of insurance agents. The second part of the statute deals with insurance against damage (fire insurance, insurance against hail, insurance of cattle, insurance of property carried on land, and liability insurance). The third and fourth parts respectively contain the special rules relating to life insurance and insurance against accidents.

The statute in several places limits the freedom of contract; thus, for instance, a condition stipulating that an insurance claim is not to be due before its amount has been established either by express acknowledgment or by compromise, or by the final judgment of a competent Court, is not binding on the insured (s. 11, see also s. 65, as to a condition limiting the right of the insured to be represented at an inquiry as to the nature and extent of the damage; s. 172, as to a condition altering the legal rules as to forfeiture in the case of life insurance, etc.). It is, however, provided that these rules are not to apply in the case of insurance of goods against the risk of carriage by land, or in the case of insurance of solvency, insurance against losses on investments, or insurance against unemployment (s. 187; see also s. 188).

A separate statute provides for the amendment of the part of the Commercial Code dealing with marine insurance, so as to bring the provisions on that subject into harmony with the rules relating to other branches of insurance.

Statute regulating the Right of Association and Public Meeting.—The rules relating to incorporated associations contained in ss. 21-79 of the German Civil Code are rules of private law; the restrictions as to the formation of associations and the control exercised over them on grounds of a public nature were, prior to the coming into force of the above-mentioned statute, regulated by State law. The new enactment recognises the principle that all German subjects are entitled to form associations for purposes which are not opposed to the rules of criminal law, but societies formed for political purposes must conform to certain rules as to their constitution and as to the conditions of membership. The rule formerly contained in s. 72 of the German Civil Code, under which every registered society had to supply a full list of members when called upon to do so by the competent Court, is repealed by the new law, under which it is sufficient to state the number of members (see s. 22).

The right of public meeting is safeguarded in a similar way as the right of association, but every meeting must either be publicly announced or notified to the competent police authority, unless it belongs to one of the specified kinds of meetings which are exempt from this rule; open-air meetings and processions through public streets require special permission. In all cases one or two representatives of the police authority may be present

at the meeting for the purpose of ascertaining whether the prescribed rules of order are duly observed; in the event of non-compliance with the rules the meeting may be dissolved.

As a general rule no language except the German language may be used at any public meeting, but an exception is made in favour of international congresses and meetings held in connection with parliamentary elections. Further exceptions may be authorised by State law, and there is also a special provision relating to districts in which more than 60 per cent. of the population are accustomed to use a foreign language. The last-mentioned exemption, which has special reference to Alsace-Lorraine, will expire on May 15, 1928.

Statute amending the Bourse Law (Law as to time bargains in stocks and produce).—The Bourse law of 1896 is a good instance of legislation introduced with a laudable object but defeating its purpose by reason of the fact that its authors were not sufficiently acquainted with the matters with which they attempted to deal, or with the character of the classes of persons which were affected by the new provisions. The principal object of the Act was to prevent persons other than professional speculators from embarking on time bargains in stocks and produce on the public exchanges. Public registers were therefore introduced in which persons regularly engaged in stock exchange or produce exchange business were expected to enter their names, and it was enacted that no time bargain in stocks or produce on any public exchange should be valid unless both parties thereto were persons entered on the exchange register; on the other hand a time bargain between parties entered on the register was to be binding, even if it had the characteristics of a wagering transaction. Time bargains on the public exchanges in shares, in mines and industrial companies, and in corn and milling products, were prohibited altogether. It was thought that in view of these provisions no one would thenceforth speculate on the exchanges, unless both he and the other party were entered upon the register and that speculation on the public exchanges in the shares and products to which the prohibition referred would cease entirely. The Act, however, had an entirely different effect; very few people had themselves entered upon the register, and no respectable person took advantage of the plea of non-registration. Moreover, a large part of the speculative business was transferred to foreign countries.

The persistent agitation for an amendment of the law did not bear fruit before 1908, when the above-mentioned amending Act was passed. The new Act abolishes the speculators' register, but in order to confine speculation to the proper channels it substitutes registration in the ordinary mercantile register for registration on a special register, and this in effect renders the bargains in question valid if both parties thereto are mercantile traders doing business on a fairly large scale. Bargains not satisfying the condition as to registration are not entirely inoperative, but are given effect to within certain limits. Time bargains in corn, milling products, and mining and

industrial shares may now be permitted by the Federal Council on such exchanges and in such manner as the Federal Council may direct, and several orders giving such permission have already been issued.

The original as well as the amended Bourse law also deals with a number of other matters which are not of sufficient importance to be referred to in this place.

Statute for the Simplification of Protests on the Dishonour of Bills of Exchange.—This statute considerably simplifies the formalities which a person presenting a bill of exchange for acceptance or payment has to go through in the event of the bill being dishonoured, but it does not go far enough. It is to be hoped that the changes in bills of exchange law which will be brought about as a result of The Hague Conference will include a modification of the cumbrous and expensive protests which are still in use in Great Britain and other countries.

Statute modifying the Liability of Persons keeping Animals.—By virtue of s. 833 of the German Civil Code a person keeping an animal was liable for all damage caused by such animal; the above-mentioned statute modifies this rule by providing that a person keeping a domesticated animal for purposes of his profession or trade or of his maintenance is not liable for any damage caused by such animal if in keeping watch over it he has used reasonable diligence, or if the damage could not have been avoided by the use of reasonable diligence.

Statutes modifying the Law as to Lèse-Majesté.—Under ss. 95, 97, 99, 101 of the German Criminal Code insults directed against the Emperor or the sovereign or regent of any German State or a member of any reigning family are punishable as therein mentioned. The result of these provisions was that incautious utterances or gestures or even mere acts of omission (*e.g.* remaining seated or remaining covered on occasions when the accused ought to have risen or removed his head-covering) were often reported to the authorities out of motives of hatred or revenge, and led to prosecutions and convictions. The new statute provides that an act coming under the above-mentioned provisions is not to be punished, unless it was committed wilfully and deliberately and with the intention of insulting the person against whom it was directed.

1909.

Statute for the Prevention of Unfair Competition.—This statute replaces the one dealing with the same subject passed in 1896 (see my *Principles of German Civil Law*, pp. 342, 343). The new law extends the provisions against unfair competition to a considerable extent. For the first time a general clause is introduced under which a person who for purposes of competition does any act violating the rules of decent conduct (gegen die guten Sitten verstossend) may be restrained by injunction on the application of any competitor, and may also be ordered to pay damages.

The provisions against specific acts of unfair competition are wider and of a more stringent nature than under the former law. As under the former law, untrue allegations made in public announcements creating the impression of a specially favourable offer, untrue allegations concerning a competitor or any of his employees likely to injure his trade or credit, as well as the misleading use of a competitor's firm name or business designation, can be made the subject of civil or of criminal proceedings. Under the new provisions a person is also liable to be punished by fine or imprisonment (*a*) if he advertises as "bankrupt stock" goods which, having originally belonged to a bankrupt, have ceased to form part of a bankrupt's estate; (*b*) if he advertises a "clearance sale" (not being one of the recurring "season" or "stocktaking" sales) without indicating the true reason of such sale; (*c*) if he includes in a "clearance sale" goods bought specially for the purpose of being so included; (*d*) if he holds a "season" or "stocktaking" sale otherwise than in accordance with the regulations (if any) issued as to such sales by the competent Government authority.

The "secret commission" mischief is dealt with by a new clause which enacts that any person who, for purposes of competition, hands over, offers, or promises to any employee or agent any gift or other advantage with a view of inducing preferential treatment as to orders or purchases by unfair means, is punishable by one year's imprisonment and by a fine.

It remains to be seen whether the new law will be more effectual in stopping unfair competition than the law which it replaces.

Statute amending the Organisation and Procedure of the German Courts.—The principal change effected by this statute is the extension of the jurisdiction of the Local Courts (Amtesgerichte). These Courts—apart from the jurisdiction conferred upon them as to certain specified matters—are the proper tribunals in all actions relating to pecuniary claims not exceeding a certain maximum amount. This amount, which under the former law was 300 marks, has been raised to 600 marks. The innovation—to a certain extent—relieves the Provincial Courts (Landgerichte), which are the Courts to which all matters not subject to the jurisdiction of the Local Courts must go in the first instance. Both the Local Courts and the Provincial Courts are spread all over Germany, so that even in cases where the Provincial Court is the Court of first instance the suitors have not to travel a long distance. There are 1,944 Local and 176 Provincial Courts in the German Empire.

Statute as to the Regulation of Motor-car Traffic.—This is the first German Imperial Statute dealing with this matter. Both cars and drivers require licences; the granting of the latter is made dependent on the passing of an examination.

A person keeping a motor-car is liable for all damage caused by such car to any human being or to any object or property, unless he can prove that the accident was due to an unavoidable event not connected with an

inherent fault of the vehicle. An event caused by the damaged person or by a third party (not being the driver of the car) or by an animal is deemed unavoidable if the keeper, as well as the driver of the car, have not been wanting in the diligence required under the circumstances of the case.

No speed limit is laid down by the Statute, but fines are imposed in the event of non-compliance with the local police regulations. Special punishments are prescribed in the case of a person attempting to avoid identification after an accident by immediate flight. Where an injured person is wilfully left in a helpless condition a sentence of six months' imprisonment may be awarded.

5. NORWAY.

[*Contributed by* P. WARNER, ESQ., *of Christiania.*]

Divorce.—When husband and wife agree to be divorced from one another the officials concerned will grant them the divorce they have asked for; but before granting them this, a special "Commission of Arbitration" (Forlikskommission) is to endeavour to reconcile the parties and try to settle the differences arising between them (s. 1).

The King may, on being requested by husband or wife, grant the divorce when the one party continually or frequently neglects the duties of support, or otherwise is guilty of serious or continuous offences against the duties of married life, or is addicted to drink or other intoxicants, or leads a disreputable life, or has several times been sentenced to punishment and consequent loss of civil rights; also when such a difference has arisen between husband and wife that, with due regard to both of them and to the welfare of their children, it is not advisable that the husband and wife shall continue to live together (s.2).

A divorce is to be granted when either husband or wife at the time of getting married, without the other's knowledge, either:

(*a*) had a fault about his or her body which made him or her unfit for married life, or

(*b*) suffered from epilepsy or leprosy, or venereal disease of an infectious kind, or

(*c*) suffered from or had been suffering from lunacy, or

(*d*) if the wife had been got into the family way by some one else than the husband.

The claim for a divorce must be put in within six months after the one party has got to know about it, and at any rate within five years after they were married.

Dissolution of marriage having reference to (*a*) and (*b*) cannot be allowed after the above faults have been made good again or the disease cured (s. 3).

Divorce is also granted when one of the parties has been punished under the Criminal Law Acts, or is guilty of having caused bodily harm to the other,

or any other wilful crime and consequent harm to the other, or been guilty of cruelty or other offence to the children. But dissolution of the marriage cannot be demanded by either party if he or she has voluntarily taken part in the offence to the children, or has agreed to it.

A demand for divorce must be made within six months after the one party has received knowledge of the criminal offence of the other, and at the latest five years after the offence was committed. If the offence leads to sentence and punishment, the demand may, however, be made later when the other party demands it within three months after he or she has got to know of the sentence, and within one year after the sentence was passed (s. 4).

S. 5 says that a divorce may be granted when a spouse has been frequently sentenced for drunkenness, etc., if the said sentence carries with it the obligation for the offender to go into a penal workhouse or sanatorium for drunkards.

Divorce is granted when a spouse has unlawfully declined for two years, against the other's will, to live with the other (s. 6).

Upon request divorce is granted the one party when the other has been declared by two skilled physicians to be a lunatic and the insanity has lasted at least for three years without the patient being likely to recover from it (s. 7).

Divorce is granted when husband and wife have been separated for two years by virtue of authority given by the Government or by the King, and cohabitation has not been resumed. But the marriage may be dissolved and divorce granted after one year's separation only provided both husband and wife demand it.

Divorce is also granted upon either party's request when the parties have without such authority of separation lived apart for three years and not resumed cohabitation (s. 8).

S. 12 orders that when a marriage is dissolved by virtue of sentence or request, the wife must not marry again till ten months have passed after having lived altogether apart from the husband.

S. 14 contains obligations for the husband to support the wife as long as she does not marry again. But such support is not required when the marriage is dissolved for reasons given under s. 3 upon the husband's request. So if the divorce was granted chiefly on account of the wife's wrongdoings, the husband is not compelled to give anything towards the support of the wife, unless there are special reasons for the husband to support her.

The husband may also be entitled to receive support from the wife, but not if the marriage is dissolved for reasons mentioned under s. 3, or if the husband only is to blame for the rupture.

Criminal Law.—Law of June 5, 1909, contains some alterations in the General Criminal Law of May 1902. While s. 85 previously made it a punishable offence to expose Norway to war or military precautions by reason of wrong conduct towards a foreign country, the section now metes out

punishment to any one who offends against any rules which the King has passed for maintaining the country's neutrality during war between foreign Powers.

S. 95 previously made it a punishable offence to expose to danger the peaceful relations with a foreign Power by publicly defying or agitating to hatred against Norway or the Government of Norway, or against another country or her Government; the same section now makes it a punishable offence to defy the flag or coat-of-arms of a foreign country.

S. 328 provides punishment for any one who unlawfully, publicly, or for a wrong purpose makes use of a password or a term which, by reason of agreement with a foreign Power, is meant to be used only by persons or institutes that are to give assistance to sick and wounded in war.

Apothecaries' Business.—Law of August 4, 1909, contains rules concerning apothecaries (chemists). The sale of medicines and poisons must, as a rule, be effected only by apothecaries licensed by the King. Hence to carry on the business as a chemist a Royal licence is required.

Concessions of Waterfalls, Mines, and other Stationary Property.—*Waterfalls.* — Without permission given by the King, no one else but the Government of Norway, Norwegian municipalities, and Norwegian citizens may become proprietors of or users of waterfalls or streams which may be reckoned, either alone or combined with others, to yield more than 1,000 natural horse-power (s. 1).

Foreign citizens and corporations, etc., and other companies with limited liabilities, whose board of directors is in Norway and a majority of the directors Norwegian citizens, may be given waterfall concessions by the King on certain conditions. Condition No. 10 requires that the concession shall be given for a specified period of at least sixty years or at the utmost eighty years. The period is reckoned from the giving of the concession. When the time of concession expires, the waterfall with all its arrangements through which the water is regulated, such as basins, canals, tunnels, mains, etc., as well as the parcels of land and rights bought for the building up of power stations, etc., is expropriated by the State without indemnity.

This also applies to the machinery and other appliances, which the State may take without paying for them. What the State is not entitled to expropriate can be released for its value by the State on valuation (s. 2).

This drastic system of dealing with concessions also applies to mining properties and other stationary property.

Another important law introduced in 1909 is the law of September 18 on the **Insuring of Sick**. This law may be said to be a step towards the next—Public Insurance.

6. SWEDEN.

[*Contributed by* P. WARNER, ESQ., *of Christiania.*]

Two important new Laws have been passed by the Swedish Parliament, viz. Law of June 5 concerning the founding and work of Emission Banks (*i.e.* banks founded for the creating of limited companies for development of commercial industries), and Law of November 20 prohibiting women's night work in factories and certain industrial concerns (concerns which employ at least ten hands).

Emission Banks.—The Law on Emission Banks provides that the bank is to be so styled as to clearly indicate that it is an Emission Bank, and that it is at the same time a limited company. The founders of an Emission Bank must number at least four. The working capital or foundation funds shall at least amount to 8,000,000 kroner (equal to £450,000).

No single person may own a greater part of an Emission Bank than the amount that corresponds to one-third of the foundation capital. Of the yearly profit at least 25 per cent. shall be put aside for the forming of reserve funds, and this is to be done every year until the reserve funds reach the same figure as the foundation capital; then they need not transfer any more of the profit to the reserve funds. Should the reserve funds, however, go down under the foundation capital, then the putting aside of profit to the former must again be started.

An Emission Bank must not receive deposits from the public in the form of savings, etc., or the like. And other kind of money must not be deposited in an Emission Bank in lots less than 10,000 kroner at a time (equal to about £550). Further, the amount of money deposited in the bank must not exceed the amount of foundation capital and reserve funds put together.

Women's Night Work in Factories.—The Law of November 20, 1909, on prohibition of women's night work in industrial concerns provides that the women workers must not work between the hours of 10 p.m. and 5 a.m. This applies to factories and industrial concerns that employ ten hands or more. The women employed in such factories, etc., are to be free for eleven hours out of the twenty-four. An exception is made for concerns whose work is confined to a season and has to be forced through in a limited time; the women may get only ten hours free.

(In order to render it easier for employers to make the necessary new arrangements, this law is not to come into force till January 1, 1911.)

Marriage Convention.—Under date of November 27, a convention between Sweden and Denmark has been agreed to, by which the high contracting parties give mutual consent to one of the parties giving the authority to their appointed diplomatic and consular officials in the other party's country to marry people in accordance with the law of the country in whose service

they are, but on the condition that at least one of the two who are to be married is a citizen of the latter country, and that none of them is a citizen of the country within whose territory the wedding takes place.

7. UNITED STATES OF AMERICA—STATE LEGISLATION.

[*Contributed by* R. Newton Crane, Esq., *of the Middle Temple.*]

The legislation in 1909 of the States of the United States was, generally speaking, as voluminous and as varied in character as in previous years. A large variety of topics of public interest was discussed and dealt with by resolutions or embodied in statutory enactments. An effort is discernible to improve the character of the electorate, and to centralise the power and authority of executive officers of all municipalities in order to lessen the opportunities for "graft" and other forms of corruption. A number of States adopted Corrupt Practices Acts, and two notable Statutes were enacted providing for the government of cities by commissions, instead of by an elected mayor and legislative council. Laws were passed in certain of the States to elevate the judiciary, and in other ways to prevent the delays of litigation. The most popular topic of legislation, however, was that which relates to the subject of temperance, and of what may properly be described as Eugenics, if this word may be considered to embrace tentative measures for the prevention of disease, not only by providing for inspection of food and sanitary appliances, but by the establishment of homes and hospitals for the isolation of tubercular patients and the organisation of bureaus of research and the administration of preventive measures in all cases of communicable disease.

The Electorate.—In Arizona, in addition to the statutory qualifications of electors as heretofore, there are added the following: "And who not being prevented by physical disability from so doing, is able to read the Constitution of the United States in the English language in such manner as to show he is neither prompted nor reciting from memory, and to write his name."

In Georgia the qualifications of the voters are as follows: "(1) All persons who have honourably served in the land or naval forces of the United States; or (2) all persons lawfully descended from such persons; or (3) all persons who are of good character and understand the duties and obligations of citizens under a Republican form of government; or (4) all persons who can correctly read in the English language any paragraph of the Constitution of the United States or of Georgia, and can correctly write the same in the English language when read to them by any one of the Registrars, and all persons who, solely because of physical disability, are

unable to comply with the above requirements, but who nevertheless can understand or can give a reasonable interpretation of any paragraph of the Constitution of the United States or of Georgia that may be read to them by any of the registrars; or (5) any person who is the owner in good faith in his own right of at least 40 acres of land situated in the State upon which he resides, or is the owner of property situated in the State and assessed for taxation at the value of $500."

Courts and Procedure.—Montana and North Dakota passed laws providing for the election of a non-partisan judiciary. Washington now requires judges of the Superior and Supreme Courts to wear black silk gowns on the Bench. Tennessee has provided that persons shall not be disqualified as jurors because of opinions which they may have formed based on newspaper reports or other rumours. In Wisconsin a new Act provides that no judgment in a civil or criminal case may be reversed for any misdirection of the jury, improper admission of evidence, or for errors as to any matter of pleading or procedure, unless in the opinion of the Appellate Court it shall appear that the error complained of has affected the substantial rights of the party complaining. Washington has now followed the rule of many Western States that trial judges must reduce their charges to writing and read them to the jury before argument by counsel.

Municipal Government.—An Act was passed by the Legislature of Massachusetts which may have a radical effect upon the government of the city of Boston. This is the result of the report of a Commission which for two years investigated the misgovernment of Boston and recommended a new charter. Its general objects are to enable the citizens to know what is being done, and to fix responsibility. The Act provides that all heads of departments and members of Municipal Boards shall be appointed by the mayor, without confirmation as heretofore by the council. The appointees shall be recognised experts in such work as may devolve upon them, or be persons specially fitted by education, training, or experience to perform the same, and they shall be appointed without regard to party affiliation or to residence. All such appointments by the mayor shall, however, be submitted to a Board of Civil Service Commissioners, whose duties it shall be to make a careful examination of the qualifications of the nominees, and not until the Civil Service Commission shall have ascertained that an appointee is a competent person with the requisite qualifications will the appointment become operative. A Finance Commission of five persons, appointed by the governor of the State, has practically supreme authority with respect to appropriations, loans, expenditures, and accounts affecting the city. The Act making these sweeping changes further provides that the citizens of Boston shall vote upon the question of which one of two plans shall be adopted for further changing the government of the city. Plan 1 provides for an election of the mayor for two years, and for the election of a city council of thirty-six members, one from each ward of the city, and nine to be elected

at large. Plan 2 provides for an election of mayor for a term of four years, and a city council of no more than nine members, all of whom shall be elected at large. No citizen shall have a right to vote for more than five candidates for the council, and the nine candidates receiving the largest number of votes shall be elected. No ballot at any municipal election shall have printed on it any party or political designation, or anything showing how the candidate was nominated or indicating his views or opinions.

The Kansas Legislature passed an Act which provides that all cities within the State of the first class (those having a population of 15,000 or over) may, by a majority vote of all electors voting at a special election called for that purpose, adopt the provisions in the general law for municipal government by commission. The commission shall consist of a mayor and four commissioners, to be elected at large by all the adult voters, including women. These commissioners shall have complete control of the police and fire departments, of finance and revenue, of water-works and street lighting and street improvements, in fact of everything that relates to the city, with power to make and enforce such rules and regulations as they may deem fit, and appoint and remove executive officers.

Gambling.—A number of the States have passed laws to prevent betting and pool-selling upon horse-racing, and some of them have gone even further. In California the new Act provides that any person who engages in pool-selling or book-making, or keeps or occupies a building or place or stand upon any public or private grounds within the State for that purpose, or for the recording or registering of bets or wagers upon the result of any trial or contest of skill, speed, or power of endurance of man or beast, or between man or beast, or upon the result of any lot, chance, casualty, or unknown or consequent event whatsoever, shall be punishable by imprisonment for thirty days without the option of a fine.

Prohibition of Cigarettes and Tobacco.—Four States have enacted legislation with respect to the prohibition of cigarettes and tobacco and their use by minors. Minnesota prohibits their sale. Both Washington and Kansas have enacted legislation of an exceptionally drastic character, which marks the highest point which sumptuary legislation has reached in the United States. The Washington Act makes the selling, giving away, or having in possession a cigarette a crime. In Kansas it is provided that every minor person who shall sell or use cigarettes, cigars, or tobacco in any form, on any public street or lands used for public purposes, or at any public place of business, shall be guilty of a misdemeanour, punishable by a fine of not more than $10, and every person who shall furnish cigarettes, cigars, or tobacco in any form to a minor, or shall permit such minor to frequent any premises owned by him for the purpose of indulging in cigarettes, cigars, or tobacco in any form, shall be guilty of a misdemeanour, punishable by a fine of not less than $25 or more than $100.

Sale of Intoxicating Liquors.—Every State in the United States has now either restricted the sale of intoxicants by prohibition generally or has authorised such prohibition by counties the residents of which have passed local laws favouring what is called "local option." On December 31, 1908, there were five States under complete prohibition law—namely, Maine, Kansas, Nebraska, Georgia, and Oklahoma. On January 1, 1910, there were nine prohibition States, including those mentioned, and Alabama, Mississippi, and North Carolina (in each of which States the new law went into effect on January 1, 1909) and Tennessee, which closed its retail liquor traffic on July 1, 1909, and abolished the manufacture of intoxicants on December 31, 1909. The voters of Florida were to vote on State prohibition in November 1910, and, if carried, the new law will take effect in 1911.

In California there are no less than 300 prohibition towns, in Iowa there are 74 counties which are "dry," to use a popular American expression; Kentucky has 92 prohibition counties, and only four which are wholly "wet." In Massachusetts there are 260 prohibition towns and 18 cities, and the State at large, by a majority of 18,000 votes, refused to grant licences. In the city of Worcester, in Massachusetts, with a population of 150,000, the question was twice submitted to the electors, who voted in favour of prohibition. Nebraska has 600 prohibition towns and 22 prohibition counties. In New Jersey the granting of licences for the sale of intoxicants in cities is by State authority, while the towns are empowered to pass local enactments on the subject. In accordance with this authority 285 towns have voted to be "dry." In Ohio there are no less than 1,621 prohibition towns under the general "local option" law, and 47 counties prohibited the sale of liquors, in any form, within the first sixty days of the law going into effect. These are only illustrations of the favour with which prohibition is received by the voters. There are 375 prohibition cities in the United States of 5,000 population and over; 90 of 10,000 and over; while 53 leading industrial centres, of 120,000 population, in 14 States are included among those communities where the sale of intoxicants in any form is forbidden. The new Legislation in 1909, aside from prohibition, was directed toward the enforcement of existing laws. In Florida and Iowa drinking upon railway trains was made a misdemeanour. The Michigan Act provides that saloons or public-houses may not furnish to any person free of charge any food except biscuits and pretzels. In Nebraska the sale of liquor in public-houses on Sunday, and between 8 p.m. and 7 a.m. on week-days, is prohibited. Iowa forbids the granting of licences for saloons to a greater extent than one for every 1,000 of the population, while Minnesota allows one for every 500 of the population. South Carolina and North Dakota make it a misdemeanour to solicit orders for intoxicants, and to advertise liquor for sale. The most novel legislation on this subject was enacted in South Dakota and New Jersey. In South Dakota an applicant for a licence to sell intoxicants must furnish a bond of $2,000, upon freehold security,

that he will not sell or give away liquor, or any kind of intoxicants to any minor or any adult person who at the time is intoxicated, or to any person in the habit of getting intoxicated, or to any person when forbidden in writing to do so by the husband, wife, parent, child, guardian, or employer of any such person, or by the mayor or other official of that town or county in which such person shall reside or temporarily remain. In New Jersey the law authorises every municipality to appoint three reputable persons, to be known as a "board of protectors," whose duty it shall be to investigate the cause of drunkenness in their municipality, and whenever they are satisfied that any person therein is an habitual drunkard they shall, by notice in writing to every house, forbid the serving of drink to such person.

Eugenics and Health Legislation.—A number of the States have passed Acts looking toward an improvement in the physical condition of the people, and nearly all of the States have now stringent laws with respect to the prevention of communicable diseases. In Colorado the statute requires a physical examination of all children attending the public schools, and in Ohio, in addition to the children themselves, there must be a medical inspection of the school premises. In Colorado, Florida, Kansas, Michigan, Montana, Nebraska, New Hampshire, North Dakota, and Oregon provision is made for a sanatorium for the use of tubercular patients, and bureaus are established for research and other laboratory work in order, if possible, to increase facilities for the detection of the disease and to take immediate steps for its prevention, or at least for its control. Illinois has increased the rigour of its laws with respect to the inspection and regulation of barbers' shops. The new Act provides for a board of examiners of three persons, to be appointed by the governor, and to consist of practical barbers, who shall hold examinations and inspect barbers' shops and issue certificates of registration, which shall be issued only to those having the requisite skill and sufficient knowledge of common diseases of the face and skin to avoid the aggravation or spreading of such diseases. Any one attempting to follow the occupation of a barber unless he shall first have obtained a certificate of registration shall be guilty of a misdemeanour.

Several of the States have passed laws for the regulation of hotels and to provide for their sanitary inspection. As an example of these laws, the Act of South Dakota defines a hotel as a place where sleeping accommodation is furnished for hire to transient guests, with or without meals. Every hotel shall pay an annual licence of $1 for every five rooms or less. Out of the fund thus created an inspector and deputies are provided, who are granted police power to enter any hotel to inspect its sanitary condition, and to ascertain if it is provided with the requisite appliances for escape in case of fire. If the inspector finds that it complies with the statutory requirements he must issue a certificate to that effect. Such certificate must be kept posted in a conspicuous place in the inspected building.

Indiana, Missouri, Nebraska, New Jersey, and Utah have enacted laws providing for the sanitation of shops in which food is sold or is prepared, to secure cleanliness as well as to see that pure food only is furnished to the public. The New Jersey statute requires that all buildings or places where food is prepared shall be properly lighted, drained, plumbed, and ventilated, and that the operations carried on therein shall be conducted in such a manner that the purity and wholesomeness of the food prepared and sold shall not be impaired. The walls, floors, and furniture must be kept clean and protected from flies and dirt, and the clothing of the operatives must likewise be kept clean.

Ethical Teaching.—The Illinois legislature has passed an Act making it the duty of every teacher in a public school in that State to teach to the pupils thereof honesty, kindness, justice and moral courage, for the purpose of lessening crime and raising the standard of good citizenship. The Act contains provisions as to the details of such instruction, and prescribes that not less than one half-hour per week shall be devoted, during each term, to instruction in kindness and justice, and in the humane treatment and the protection of birds and animals, and in the important part they fulfil in the economy of nature. It also prohibits any experiments upon any living creature for the purpose of demonstration in any public school of the State.

Mob Violence.—The generally accepted reason for lynch law in the United States is that if a culprit, who is caught red-handed in the commission of a crime, is left to be dealt with by the Courts, his counsel will eventually procure his acquittal by delays of the trial and the interposition of legal technicalities. In certain localities bands of masked men known as "night riders" have terrorised individuals to prevent them from voting or from committing acts distasteful to the "riders." To prevent this class of offences the Arkansas legislature passed an Act which provides that two or more persons who unite for the purpose of doing an unlawful act, or who while armed or disguised shall intimidate any person, and all persons who knowingly attend a meeting for such purpose, shall be guilty of felony and punishable by confinement in the penitentiary for a term not to exceed five years. If such persons go forth at night or at any time disguised, and intimidate or attempt to intimidate any person by assault, destruction of property, or post or deliver any written or printed note calculated to intimidate them, they shall be guilty of felony punishable by from two to ten years' imprisonment. If any person seeks to intimidate by writing or token (such as delivering a bundle of switches or matches), or deliver any message purporting to come from such unlawful band, he shall be guilty of felony, punishable by imprisonment from one to seven years. A further Act provides that when mob violence is threatened the sheriff shall write to the judge of the trial Court and request a special term of Court. The judge shall ascertain that the fear of mob violence is well founded, and shall then empanel a special grand jury and provide the necessary judicial machinery and begin the trial within ten days.

In case the trial judge is ill, or otherwise unable to hold Court, he shall call the special term, and the bar in attendance upon the Court shall elect a special judge to preside in the absence of the regular judge. If the defendant takes a change of venue, the trial shall be fixed in such changed venue within ten days.

"Hazing" or ragging, or the intimidation of students, was the subject of legislation in California, Iowa, Nebraska, and Rhode Island. The laws provide in substance that it shall be unlawful for any pupil enrolled in any school to join, or become a member of, any secret fraternity wholly or partly formed from the membership of pupils attending such schools.

BRITISH EMPIRE.

I. BRITISH ISLES.

1. UNITED KINGDOM.[1]

Acts passed—Public General, 49 ; Local and Personal, 164 ; Private, 1 (not printed).

Army.—The Annual Army Act is one of the few really Imperial measures passed at Westminster. Its provisions are not in force without specific enactment by the local Legislatures, but it has been adopted almost throughout the Empire. Doubts had arisen as to its application in Canada, and other difficulties had been raised in regard to the powers of the Governors of Crown Colonies. These are set at rest by c. 3 (B.E.).[2] So far as it concerns the United Kingdom the chief object is to transfer to the Army Council the greater portion of the powers of the Secretary of State and all of those of the Commander-in-Chief and Adjutant-General under the Army Act.[3] The use of mechanical traction for the purposes of mobilisation is legalised and "the occupiers of all public buildings, dwelling-houses, warehouses, barns, and stables" are rendered liable to have forces billeted upon them in case of emergency.

Assurance Companies.—The Assurance Companies Act (c. 49, U.K.) was the only consolidating Act passed during the session. S. 36 came into force at once. It legalised assurances estimated to number ten millions taken out by poor people, who had no legal insurable interest, with friendly societies. It is sufficient now to show that the insurer had at the time a *bona fide* expectation of incurring expenses in connection with the funeral of the assured, and that the sum is not an unreasonable provision to cover those expenses.

The remainder of the Act did not come into operation until July 1, 1910. It incorporates the provisions of the Life Assurance Companies Act, 1870,[4]

[1] This section is based upon the article entitled "The Legislation of the Session" in *The Times* of January 4, 1910.

[2] The letters B.E., U.K., E., S., and I. signify application to the British Empire, the United Kingdom, England (including Wales), Scotland, and Ireland.

[3] 44 & 45 Vict. c. 58.

[4] 33 & 34 Vict. c. 61.

1871,[1] and 1872,[2] and of the Employers' Liability Insurance Companies Act, 1907.[3] It also brings within their scope companies engaged in bond investment business[4]—that is, the business of issuing bonds or endowment certificates by which the company, in return for subscriptions payable at periodical intervals of two months or less, contract to pay the bondholder a sum at a future date. The principal change in the law is to place foreign companies on the same footing as English companies, and all are required to deposit a bond of £20,000 and make returns in the prescribed form to the Board of Trade.

The Act applies to all companies (exclusive of friendly societies and trade unions) engaged in life, fire, accident and employers' liability insurance and bond investment business. The Act also applies to companies constituted outside the United Kingdom which carry on business therein, whether incorporated or not. A company transacting only marine or plate glass insurance does not come within the scope of the Act, from which is also excluded a member of Lloyd's or of any other association of underwriters approved by the Board of Trade, provided that he complies with the requirements set forth in a schedule. An association of employers for mutual insurance against liability for compensation to workmen is likewise exempt. Special classes of business are subject to some modifications of the general provisions.

To all the companies within the Act is extended the obligation, previously resting only on life insurance companies, to deposit £20,000 with the Paymaster of the Supreme Court. The sum remains in court as a security for the policy-holders. The deposit will have to be made for each class of business, though the exceptions as to combinations of different branches have the effect that the maximum deposit will be £60,000, and that can only be required in the exceptional case of a company engaged in life and employers' liability insurance and bond investment business. Under certain conditions the deposit may be withdrawn except in the case of life insurance companies, when it remains permanently in court. The details of administration in regard to these deposits and also those made by underwriters are defined in the Rules made under the Act on June 6.

A group of sections is devoted to secure as far as possible the financial stability of the companies. The accounts of the different classes of the company's business must be kept separate, and funds held for the benefit of one class must not be applied to the liabilities of another. The accounts of underwriters are also made subject to audit. Every five years, if not more often, a complete actuarial examination must be made of an insurance company's accounts and an abstract of accounts deposited with the Board of Trade in a form prescribed in the Act. The Rules under the Act define

[1] 34 & 35 Vict. c. 58. [2] 35 & 36 Vict. c. 41. [3] 7 Ed. VII. c. 46.

[4] See Report of the Departmental Committee on Bond Investment Companies, 1906, d. 2769, 2770.

the qualifications required in the actuary signing the returns. The shareholders and policy-holders are entitled, on application, to have a copy of the balance sheet, a list of shareholders and a copy of the deed of settlement, if the company is not registered under the Companies Act. The same publicity attends the amalgamation under the direction of the Court of two or more companies. Any document deposited with the Board of Trade in pursuance of the Act shall be open to inspection. A section added to the original Bill requires any published statement in regard to the capital of an insurance company to contain particulars of the amounts subscribed and paid-up. The whole purpose of the Act is to bring insurance business under more efficient supervision.

Cinematographs.—The serious accidents in connection with cinematograph exhibitions led to the passing of the Cinematograph Act (c. 30, U.K.) for securing greater safety by requiring the premises in which they are held to be licensed by a county council. The regulations made by the Home Office under the Act were gazetted on December 21, 1909.

Education.—The Local Education Authorities (Medical Treatment) Act (c. 13, E.) enables them to recover from the parents the cost of medical treatment, but no parent is obliged to submit his child to medical inspection.

The Education (Administrative Provisions) Act (c. 29, E.) removes all restrictions in regard to delegation by local education authorities to education committees, except that no power is to be given to them in regard to raising money. Councils are authorised to combine for the purposes of Part II. of the Act of 1902[1] in connection with secondary education and colleges. Land acquired for educational purposes by a local authority may be used for any other object approved by the Local Government Board. Another section directs attention to a curious oversight on the part of the Board of Education, who have been accustomed to make signed agreements with young people entering training colleges for the repayment of some portion of the cost upon their failure to follow the profession of a teacher. It has been customary to stamp these agreements, but since they were made with infants the documents were valueless as a basis for legal proceedings. A section in the Act makes the sums repayable by the maker of the agreement as debts against the Crown "notwithstanding that he was an infant at the time when the undertaking was given."

Electric Lighting.—The Electric Lighting Act (c. 34, U.K.) had been before Parliament in the form of a bill for some considerable time, and had for its chief objects to remove difficulties which had been experienced in the working of the Electric Lighting Acts, and to make general a series of provisions usually inserted in local Acts. In addition there is a section for the protection of the Royal palaces, parks and gardens, museums, and other public buildings and their contents by permitting a representative of

[1] 2 Ed. VII. c. 42: see *Legislation of the Empire*, vol. i. p. 93.

the Commissioner of Works to inspect any generating station in order to see that proper precautions are adopted for the consumption of smoke, for preventing so far as reasonably practicable the evolution of oxides of sulphur, and generally for the prevention of nuisance in relation to the protected premises. In the event of any neglect in these respects the Commissioners may require the undertakers to carry out such works and to do such things as are necessary in the circumstances.

Finance.—The session was memorable for the fact that the annual Finance Act making the usual provision for the requirements of the country did not pass into law owing to the objection by the House of Lords that it contained requirements which could not be regarded as strictly financial. Chapters 1, 2, 5 and 6, however, were concerned with finance and contained no features of note. The Revenue Act (c. 43, U.K.) dealt with the procedure for the collection of customs duties and stamping of documents.

The Development and Road Improvement Funds Act (c. 47, U.K.) is not merely a money measure as its short title implies, but contains important provisions "to promote the economic development of the United Kingdom and the improvement of roads therein."

The first part enables the Treasury to make grants for the purpose of aiding and developing agriculture and rural industries, forestry, the reclamation and drainage of land, the improvement of rural transport (other than roads), the construction and improvement of harbours and canals, the development and improvement of fisheries, and any other purpose calculated to improve the economic development of the United Kingdom. Agriculture and rural industries are defined to include agriculture, horticulture, dairying, the breeding of horses, cattle, and other live stock and poultry, the cultivation of bees, home and cottage industries, the cultivation and preparation of flax, the cultivation and manufacture of tobacco, and any industries immediately connected with and subservient to any of the said matters. For the purpose of carrying out this portion of the Act a body of five Development Commissioners is constituted of whom two are to be paid salaries not exceeding £3,000 per annum. Under the second part of the Act a Road Board with a paid chairman and vice-chairman is constituted, for the purpose of improving the facilities for road traffic. They may do so by making advances to highway authorities for the improvement of existing roads or construction of new roads, or themselves construct and maintain them. Compulsory powers are given to the Road Board to purchase land on either side of the proposed road within 220 yards of the middle of it. By this means the Road Board will receive the increment in the value of the land arising from the making of the new road.

Fisheries.—The Trawling in Prohibited Areas Prevention Act (c. 8, U.K.) has for its object the protection of fishermen of the United Kingdom, by

placing an indirect check upon foreign fishers. The procedure adopted is to prevent them from landing the fish in this country, as it is argued that only in very exceptional cases will it be profitable for the foreigner to take the fish into his own ports. The Bill, as introduced, applied only to Scottish waters, but was extended to Ireland in its course through Parliament. The Act is officially described as relating to the United Kingdom.

Government Departments.—A series of small Acts deal with the *personnel* of the Government Departments. The Board of Trade Act (c 23, U.K.) authorises an increase in the salary of the President, owing to the greater importance of the office since the amount was fixed in 1826.[1] The Assistant Postmaster General Act (c. 14, U.K.) enables an Assistant Postmaster General to sit in the House of Commons; and the Board of Agriculture and Fisheries Act (c. 15, U.K.) permits the appointment of a Secretary of the Board.

Housing and Town Planning.—The portion of the Act relating to housing amends the earlier Acts and makes the law of Scotland correspond to that of England. The Act does not apply to Ireland. The aim of the Act is to simplify the procedure and extend the powers for improving housing conditions. The Local Government Board is substituted for Parliament as the confirming authority for schemes dealing with Part I. of the principal Act of 1890 or for reconstruction schemes under Part II., or for exercising compulsory powers of purchase for the purpose of Part III. Local authorities instead of applying to a magistrate for a closing order of an unhealthy area may make the order themselves, and an appeal against it, instead of being to quarter sessions, is to the Local Government Board. Part III. of the Act of 1890 is now of general application instead of being adoptive. The old procedure for compulsory purchase of land is superseded by a new one set forth in a schedule. County councils may promote societies having for their object the erection or improvement of dwellings for the working classes. The terms for housing loans are made more favourable. In order to secure a better enforcement of the Act the Local Government Board is given powers for the coercion of local authorities. A public health committee must be established by every county council. The law is strengthened in regard to the liability of landlords so as to compel them to maintain premises in a fit condition. Generally speaking back-to-back houses are forbidden and sleeping rooms below a certain level are regarded as unfit for habitation. The conditions of the appointment of medical officers of health are also amended with a view to give them greater independence and render the service more efficient.

The portion of the Act relating to Town Planning has attracted the most attention. Its object is to secure that growing towns shall

[1] 7 Geo. IV. c. 32.

extend methodically instead of in the present haphazard manner. With that aim it enables local authorities to prepare schemes to control the development of building land in or neighbouring on their area. The scheme must be submitted to the Local Government Board, and having obtained their approval becomes law, unless objection is raised, when the order of the Board must be laid on the table of the House in order to give opportunity to an address to the Crown to be presented against it. Local authorities may combine in the preparation and enforcement of schemes. This portion of the Act, like much other recent legislation, is merely a skeleton to be clothed with regulations of the Local Government Board. The Act intends that efforts shall be made to secure the co-operation of owners and others interested in the land by conferences and such other means so that the schemes may receive general approval. After the town planning scheme is made by the central authority, the local authority has strong powers to enforce it. They may "remove, pull down, or alter any building or other work in the area included in the scheme which is such as to contravene the scheme, or in the creation or carrying out of which any provision of the scheme has not been complied with, or execute any work which if it is the duty of any person to execute under the scheme in any case where it appears to the authority that delay in the execution of the work would prejudice the efficient operation of the scheme." Any expenses thus incurred by a "responsible authority" may be recovered from the persons in default. The basis of compensation to owners is laid down in the Act, and on the other hand the local authority may make a claim for betterment. The Local Government Board has power to take action in the place of a local authority failing to make a town planning scheme.

Labour.—The Board of Trade have established Labour Exchanges in accordance with the Labour Exchanges Act (c. 7, U.K.). The Board may maintain them or assist local authorities or voluntary bodies to do so by collecting and furnishing information as to the requirements of employers. The Board may appoint advisory committees somewhat similar to the Consultative Committee of the Board of Education.[1] The Board may make regulations which may include the conditions upon which loans can be made to work-people for their travelling expenses to places where work has been found for them. But no person shall suffer any disqualification or be otherwise prejudiced by a refusal to work where there is a strike or at a lower rate of wages than those current in the trade in the district where the employment is found. False representations for the purpose of obtaining work are punishable upon summary conviction by a fine of £10. An important use of the machinery of this Act will be to guide the large amount of young labour as it leaves the schools into satisfactory channels.

[1] See *Legislation of the Empire*, vol. i. p. 29.

The Trade Boards Act (c. 22, U.K.) is another medium for legislative control over the conditions of labour. It follows the lines of Australian legislation.[1] Unless extended to other trades by Provisional Order, the Act applies only to tailoring, lace-making, and the manufacture of boxes and chains. The constitution of the trade board is left for supplementary regulations, but employers and workpeople are to be represented in equal proportion. The Board of Trade are to select a chairman from among the members and appoint a secretary to be paid by the Treasury. The Board of Trade have also the appointment of a number of members, not more than half the number of representative members. They may, and for trades in which women are largely employed must, include a woman. The members appointed by the Board of Trade are to be paid by the Treasury, and the ordinary members may receive their expenses, including compensation for loss of time. District trade committees, to which the trade boards may delegate any of their powers, may be appointed, to consist of members of the trade board and co-opted members.

The general duty of the trade board is to consider any matter in reference to the industrial conditions of the trade upon a reference from a Government department and to make a report. Their specific duty is to fix a minimum rate of wages for time work and piece work in the different trades under their authority. The probability of finding that duty impossible of accomplishment is anticipated by allowing the Board of Trade to relieve them of it upon a report to that effect. Detailed provisions are made with a view to securing the gradual enforcement of the determined rate of wages. The employer is liable to a fine not exceeding £20 for each offence in paying below the rate fixed by the Board, and £5 for each day on which the offence is continued after conviction. The Court may also order a payment to be made to the worker equivalent to the deficiency. Permits may be granted by the Board for the employment at a lower rate of workers incapacitated in some way from working at full strength. The burden of proof as to the payment of the full amount lies upon the employer. The trade board may take proceedings on behalf of the worker, but before doing so are required to take reasonable steps to bring the facts to the notice of the employer with a view to a settlement without recourse to legal proceedings.

The Board of Trade are empowered to appoint inspectors to assist in carrying out the Act; £15,000 was the amount appropriated for the expenses incurred under the Act in the first year, but it is clear that the cost must be much more in a short time unless the Act is very limited in its operation.

Marine Insurance.—A "P.P.I." policy is a policy of marine insurance made by a person who does not require to prove any interest beyond holding the policy itself. The policies were void in law, but in practice were never

[1] See, for example, the South Australian Act, *Legislation of the Empire*, vol. ii. p 55.

repudiated. The policies, however, encouraged gambling, not only financial, but in human lives. A vessel heavily mortgaged and over-insured left port in a bad state of repair with a dangerous cargo. She became the subject of insurance by people whose only interest was that she should sink. The object of the Marine Insurance (Gambling Policies) Act (c. 12, U.K.) is to stop the nefarious practice by making it a criminal offence for a person to effect a contract of marine insurance without having some *bona fide* interest or expectation of interest, direct or indirect, in the safety of the vessel or subject-matter insured. Thus genuine business which has been done by means of these policies will be protected by the insurer proving that he had a *bona fide* interest in the safety of the matter insured.

Motors.—The Motor Car (International Circulation) Act (c. 37, U.K.) permits effect to be given by Order-in-Council to any convention for facilitating the international circulation of motor-cars by granting passes or other requirements to persons resident in the United Kingdom for travelling abroad, and by registering foreigners motoring in this country.

Navy.—The Navy is the subject of three Acts. C. 18 (U.K.) is the Naval Establishments in British Possessions Act. Upon a representation of the Admiralty and Treasury any property held for naval purposes in any British possession may be transferred to the Governor and the way be so prepared for carrying out the recommendations of the Imperial Defence Conference. By the Colonial Naval Defence Act (c. 19, U.K.) volunteers enlisted under the provisions of the Colonial Naval Defence Act, 1865,[1] shall form part of the Royal Naval Volunteer Reserve and upon an emergency may be subject to the conditions of service in the Navy. The Naval Discipline Act (c. 41, U.K.) affects the disciplinary portion of those conditions by enabling the punishment of "detention" to be substituted for imprisonment for certain offences against the Naval Discipline Act,[2] in order to avoid the stigma of imprisonment in the case of those men who have been convicted for some offence, but not dismissed from the service. The ships or buildings set apart for this punishment are to be called "naval detention quarters."

Oaths.—The aim of the Oaths Act (c. 36, E. and I.)[3] is to provide a more sanitary method of administering the oath than kissing the Bible. It enacts that "any oath may be administered and taken in the manner following: The person taking the oath shall hold the New Testament, or in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administrating the oath the words 'I swear by Almighty God that . . .' followed by the words of the oath prescribed by law."

Superannuation.—Two Acts are concerned only with the subject of superannuation. The Superannuation Act (c. 10, U.K.) reduces the allowance to

[1] 28 & 29 Vict. c. 14. [2] 29 & 30 Vict. c. 109.
[3] Adopted in Hong-Kong by Ordinance No. 3 of 1910.

civil servants while safeguarding the rights of existing officials. The Asylum Officers' Superannuation Act (c. 48, U.K.) makes provision for asylum officers, who are divided into two classes—(1) those having the care or charge of the patients, and (2) all other established officers and servants of those institutions.

Workmen's Compensation.—A modification is made in the Workmen's Compensation Act, 1906,[1] by the Workmen's Compensation (Anglo-French Convention) Act (c. 16, U.K.) embodying arrangements for British subjects to have the same right as French subjects in France and *vice versa*.

Scotland.—Three small Acts applied only to Scotland. The Prisons Act (c. 27) provides for the appointment of women as members of visiting committees for prisons. The Summary Jurisdiction (Scotland) Act, 1908, Amendment Act, 1909 (c. 28), removes doubts as to the manner in which accused persons may be detained in custody pending trial, under the provisions of the Summary Jurisdiction (Scotland) Act, 1908.[2] The Wild Animals in Captivity Protection (Scotland) Act, 1909 (c. 33), extends to Scotland the Wild Animals in Captivity Protection Act, 1900.[3]

Ireland.—The condition of the money market having combined with other causes to render unworkable the Irish Land Act, 1903,[4] amendments were effected by the Irish Land Act, 1909 (c. 42).[5] S. 1 of the new Act alters the amount of the purchase annuity in the case of advances made in pursuance of future purchase agreements from £3 5*s*. to £3 10*s*. for every £100 of the advance. The increase in the rate of repayment throws an increased burden on purchasers, whose annuities will be correspondingly increased. As a result of this increased rate of interest the Treasury are given power to create a new capital stock to be called Guaranteed Three per cent. Stock. By s. 27 of the Act of 1903 advances for the purposes of the Act were to be made in money, but s. 3 of the Act of 1909 enables advances to be wholly or in part by means of stock. Under the Act of 1903 any loss upon the flotation of stock fell upon the Irish tax-payer, but by the new Act the Treasury undertakes to meet the burden of this loss in future agreements out of public funds, so that the only liability likely to be incurred by the tax-payers of Ireland is that which may arise from non-payment of the annuities. By the Act of 1903 a bonus at the rate of 12 per cent. of the purchase money was given to induce vendors to sell, but the total fund was limited to twelve millions. This limitation is repealed and a sliding scale of bonus substituted in its place. The Act also provides for making good any deficiency in the issue of stock at a discount or in respect of interest or sinking fund. Part II. deals with Land

[1] 6 Ed. VII. c. 58: see *Legislation of the Empire*, vol. i. p. 131.
[2] 8 Ed. VII. c. 65: see Journal, N.S. vol. x. p. 300.
[3] 63 & 64 Vict. c. 33: see *Legislation of the Empire*, vol. i. p. 46.
[4] 3 Ed. VII. c. 37: see *Legislation of the Empire*, vol. i. p. 113.
[5] In summarising this Act use has been made of three articles in the *Irish Law Times*, December 18, 1909, January 1 and 8, 1910.

Purchase. Under the Act of 1903, the Land Commission, when they considered it expedient, were authorised to advance to any tenant for the purchase of a holding a sum of £7,000; the new Act cuts this down to £5,000 and makes the normal advance a sum not exceeding £3,000. S. 17 repeals s. 2 of the Act of 1903, and provides that in the case of the sale of an estate advances may be made for the purchase of parcels of land as distinct from holdings (*a*) to tenants of holdings or proprietors of holdings not exceeding £10 in rateable value; (*b*) to persons who have surrendered their holdings for the purpose of relieving congestion; (*c*) persons who within twenty-five years before the passing of the Act of 1903 were tenants of holdings at the date of the purchase; and (*d*) any other person to whom the Land Commission think an advance ought to be made. Part III. of the new Act reconstitutes and incorporates the Congested Districts Board. The Chief Secretary, the Under-Secretary to the Lord Lieutenant, and the Vice-president of the Department of Agriculture and Technical Instruction are to be *ex officio* members. Nine members are to be appointed for terms of five years by the Crown, and two others, to be remunerated by a salary of £2,000 per annum, to hold office during pleasure. Certain duties of the Congested Districts Board are to be transferred to the Board of Agriculture, and three members from each will form a consultative committee for the co-ordination of business in relation to sea fisheries. The Estates Commissioners have strong powers given to them for the compulsory purchase of land, but in certain circumstances the persons interested may apply to the Judicial Commissioner for an order to restrain them. An appeal lies from his decision to the Court of Appeal.

Five minor Acts also apply to Ireland only. The Health Resorts and Watering Places (Ireland) Act (c. 32) empowers local authorities in Ireland to strike a rate for advertising health resorts and watering places. The Act embodies a new departure in the legislation of the United Kingdom, though for some years public money has been used to advertise the advantages of other parts of the Empire.[1] The Irish Handloom Weavers Act (c. 21) and the Merchandise Marks (Ireland) Act (c. 24) are concerned with the protection of Irish manufactures by requiring the trade mark to be woven in certain goods and allowing the Department of Agriculture and Technical Instruction to prosecute infringements of the Merchandise Marks Acts. To the same department is given by the Weeds and Agricultural Seeds (Ireland) Act (c. 31) authority to take measures to prevent the spread of noxious weeds and to test the purity and germination of agricultural seeds. The Local Registration of Title (Ireland) Act (c. 36) makes provision with respect to the application of the Local Registration of Title (Ireland) Act 1891,[2] to the County of Cork.

India.—The Indian Councils Act (c. 4), with the regulations made thereunder, forms the subject of a separate article by Sir Courtenay Ilbert.[3]

[1] For example, by the New Brunswick Act passed in 1898: see *Legislation of the Empire*, vol. i. p. 245. [2] 54 & 55 Vict. c. 66. [3] *Supra*, p. 243.

South Africa.—The South Africa Act (c. 9), setting forth the terms of union of the South African Colonies, has been analysed in an article by Mr. A. Berriedale Keith.[1]

Isle of Man.—The Isle of Man (Customs) Act (c. 45) is one of the usual Acts dealing with the customs of the island.

London and Liverpool.—The Metropolitan Ambulances Act (c. 17) authorises the County Council to establish and maintain an ambulance service. The Police Act (c. 40) amends the Acts relating to the Metropolitan Police who serve a larger area than the County of London, and makes better provision for the widows and children of constables who have lost their lives in the execution of their duty. A Special Commissioner having been appointed to hold an inquiry respecting the conduct of the police of the City of Liverpool, the object of the Police (Liverpool Inquiry) Act (c. 35) was to give him the powers conferred upon the Metropolitan Police Commission in 1906.[2]

2. THE ISLE OF MAN.

[*Contributed by* His Honour S. Stevenson Moore, *First Deemster.*]

The Legislature passed in 1909, besides several Acts of a private nature, the Factories and Workshops Act, for the inspection of and regulation of employment in factories, etc.; a Partnership Act, codifying the law on the subject, and legalising for the first time "limited partnerships"; also the White Phosphorus Matches Prohibition Act, prohibiting the use of white phosphorus in the manufacture of matches and the sale of such matches.

3. JERSEY.

[*Contributed by* E. T. Nicolle, Esq.]

An important Law on Procedure in Civil and Criminal Cases was passed by the States on April 23, 1908, and sanctioned by Order-in-Council August 1, 1908.

Art. 1 provides that in all civil cases the parties and their relations may be heard as witnesses; but married persons cannot be obliged to reveal communications made to each other.

Art. 2 provides that in all prosecutions the parents or relations of an accused person may be heard as witnesses either for the prosecution or for the defence, with the exception of the husband or wife of an accused person, who cannot be obliged to bear witness unless the crime or misdemeanour has been committed against the husband or the wife called as a witness.

[1] See Journal, vol. x. N.S. p. 40.

[2] 6 Ed. VII. c. 6: see *Legislation of the Empire*, vol. i. p. 135.

The accused person and the husband or wife of an accused person may be heard as witnesses for the defence, provided that:

(1) An accused shall not be called as a witness except upon his own request.

(2) No comment shall be made should he or she not give evidence.

(3) The wife or husband of the person accused shall only be called at the request of the accused.

(4) Neither husband nor wife shall be compelled to disclose communications which have passed between them.

(5) An accused called as a witness may be asked any questions, although the replies thereto may tend to incriminate him or her as to the offence charged.

(6) An accused called as witness shall not be obliged to reply to a question tending to show he has committed or been accused of having committed or has been convicted of some other offence or that he is of bad character, unless—

(*a*) the proof that he has committed or been convicted of such other crime is admissible evidence that he is guilty of the offence of which is actually accused, or

(*b*) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his good character or has himself given evidence to that effect, or the nature of the defence is such as to involve imputations on the character of the complainant or of the witnesses for the prosecution; or

(*c*) he has given evidence against another person charged with the same offence.

Art. 3 provides that any person convicted for a crime or misdemeanour, whether actually undergoing sentence or not, shall be allowed to give evidence in all cases.

The remaining Articles of the Bill apply to local procedure.

There was no legislation passed in 1909 of sufficient importance for review.

4. GUERNSEY.

Prescription.—"Loi relative à la Prescription Immobilière."—By the ancient law of Normandy in force in the island the period required for prescription in matters concerning realty was forty years. By a Law sanctioned in 1852 the period was reduced to thirty years, and by the present Law it is still further reduced to twenty years.

Marriage.—"Loi relative au mariage avec la sœur d'une femme décédée" reproduces the English Act of 1907.[1]

Incest.—"Loi pour la Punition d'Inceste" is in the same terms as the English Act of 1908.[2]

[1] 7 Ed. VII. c. 47: see *Legislation of the Empire*, vol. i. p. 153.

[2] 8 Ed. VII. c. 45: see Journal, N.S. vol. x. p. 296.

II. BRITISH INDIA.

[*Contributed by* Sir Courtenay Ilbert, K.C.B., K.C.S.I.]

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

Acts passed—7.

Steamships.—The objects of the Indian Steamships Law Amendment Act, 1909 (No. 1), are to extend the provisions of the Acts relating to steamships (6 and 7 of 1884) to vessels propelled by electricity or other mechanical power, to require certificates of survey from foreign as well as from British steamships, and to facilitate the grant of these certificates.

Currency.—The Indian Paper Currency (Amendment) Act, 1909 (No. 2), gives the five-rupee currency note currency in Burma as well as in other parts of India. Its currency had previously been excluded from Burma.

Insolvency.—The Presidency-towns Insolvency Act, 1909 (No. 3), is an important and useful measure which establishes for the three Presidency towns and for Rangoon an insolvency law framed on the same general lines as the English Bankruptcy Act of 1883.[1] Previously the insolvency law in the Presidency-towns had been regulated by an Act of Parliament passed in 1848,[2] and representing the English bankruptcy law as it stood before the changes made in 1869 and in 1883. Several attempts had been made by successive law members of Council to substitute for this antiquated law one more in accordance with the lines on which bankruptcy and insolvency legislation has proceeded elsewhere, but technical difficulties stood in the way. One of the difficulties was that the Act of 1848, being an Imperial Act, could operate, for vesting property and other purposes, outside British India, whilst an Indian Act could not. But those who are entitled to speak with authority on the practical working of the bankruptcy law in India are now of opinion that this difficulty is more theoretical than substantial, and that s. 118 of the English Bankruptcy Act, 1883, requiring all British Courts exercising jurisdiction in insolvency and bankruptcy to act in aid of each other, supplies practically all the external support which the Indian Insolvency Courts require.

In these circumstances the late law member, Sir Erle Richards, persuaded the Legislative Council that they might with great advantage and with safety repeal the Act of 1848, and replace it by an Indian Act on modern lines. This was the last Act which Sir Erle Richards passed through the Council; and he is warmly to be congratulated on having solved a problem which baffled many of his predecessors. It will be remembered that he had in

[1] 46 & 47 Vict. c. 52. [2] 11 & 12 Vict. c. 21.

1907 cleared the way by carrying through an Act dealing with insolvency outside the Presidency-towns.[1]

Whipping.—The Whipping Act, 1909 (No. 4), consolidates with amendments the general Indian enactments on this subject. Whipping was deliberately excluded from the category of punishments recognised by the Indian Penal Code of 1860, but was authorised as a punishment for certain offences by the Whipping Act, 1864, which was afterwards amended by sundry enactments, including an Act of 1900.[2] Those who are interested in the history of Indian official opinion and legislation on this subject may study, in the proceedings of the Governor-General's Council, the long speech delivered by Mr. Dadhaboy on March 22, 1909. The Act of 1909 narrows and defines with somewhat greater precision the classes of cases in which whipping may be inflicted.

Whipping may be inflicted in lieu of any other punishment for the following offences under the Penal Code:

(*a*) theft as defined in s. 378, other than theft by a clerk or servant of property in possession of his master;
(*b*) theft in a building, tent, or vessel;
(*c*) theft after preparation for causing death or hurt;
(*d*) lurking house-trespass or housebreaking in order to the commission of an offence punishable with whipping.

Whipping may be inflicted either in lieu of or in addition to any other punishment for—

(*a*) abetting or attempting to commit rape;
(*b*) compelling or inducing by fear of bodily injury to submit to an unnatural offence;
(*c*) voluntarily causing hurt in committing or attempting to commit robbery; or
(*d*) committing dacoity.

These restrictions apply to adults. For juvenile offenders the provisions are more general.

Any juvenile offender who abets or commits or attempts to commit (*a*) Any offence punishable under the Indian Penal Code, with certain specified exceptions, or (*b*) any offence punishable under any other law with imprisonment which the Government of India may, by notification in the *Gazette*, specify in that behalf, may be punished with whipping in lieu of any other punishment. The expression "juvenile offender" means a person under sixteen years of age, and the finding of the Court is conclusive on this point.

In frontier tracts and other wild regions a greater latitude is given by s. 7. Under that section, whenever any local Government has, by notification, declared the provisions of this section to be in force in any frontier district or wild tract of country, then, for offences subsequently committed in that

[1] See *Legislation of the Empire*, vol. iii. p. 25. [2] *Ibid.* p. 9.

district or tract, and punishable with imprisonment for three years and upwards, whipping may be substituted for any other punishment.

Army.—The Amending (Army) Act, 1909 (No. 5), makes in the Acts relating to the Indian Army some formal amendments rendered necessary by recent changes in the rank and designation of generals commanding in India, and also—

(1) amends the law regulating the admission of soldier lunatics into asylums;

(2) empowers the commanding officers of volunteer corps to remove from the roll the names of non-effective members; and

(3) gives better control over the sale and supply of spirituous liquors and intoxicating drugs in cantonments.

Volunteers.—The Indian Volunteers (Amendment) Act, 1909 (No. 6), provides that any member of the Territorial Forces who is attached to a volunteer corps in India shall, while so attached, be subject to the Indian Volunteers Act.

Marriage.—The object of the Anand Marriage Act, 1909 (No. 7), is to remove doubts as to the validity of marriages between Sikhs solemnised in accordance with the marriage ceremony called Anand. The Act is short, simple, and permissive in character. It does not define what is meant by a Sikh. It does not describe the ceremony known as Anand. These things are wisely assumed to be known by the persons interested and affected. Nor does it make the observance of any particular forms or ceremonies obligatory on any class of persons. The speeches made in Council on August 27 and December 22, 1909, by the Sikh gentlemen who promoted the Bill, by Sir Louis Dane, the Lieutenant-Governor of the Punjab, and by that high authority on Indian castes, Sir Herbert Risley, are of great interest from the light which they throw on the nature of the Sikh community, and on the characteristics of Hindu marriages. According to Sir Louis Dane, there are numerous sub-sections of the Sikhs, as there are of every other religious creed in the world, but the term "Sikh" includes all persons who belong to the Sikh faith, and take the tenets of their religious belief from the writings known as the "Sri Guru Granth Sahib."

2. MADRAS.

Acts passed—7.

Revenue.—The Madras Revenue Recovery Amendment Act, 1909 (No. 1), enables a person interested in land sold for default in payment of revenue to set aside the sale on depositing, within a limited time, a sum equal to 5 per cent. on the purchase money, and also the amount due for arrears of revenue.

Labour and Emigration.—Act No. 2 repeals the Madras Labour and

Emigration Act, 1866, which applied only to emigration to Assam, and had been made unnecessary by legislation of the Government of India on the same subject.

Land.—The Madras Estates Land Act Amendment Act, 1909 (No. 4), corrects certain drafting errors, and clears up some obscurities in the elaborate Land Act of 1908.[1]

Municipal Government.—The Madras District Municipalities Act Amendment Act, 1909 (No. 5), confers on the chairman of a district board powers with respect to the supply of water for domestic purposes, and gives Government officers legal protection when they are appointed to carry out water or drainage works on behalf, or in place of, a municipal council.

Acts Nos. 3, 6, and 7 are of no general interest.

3. BOMBAY.

Acts passed—3.

Criminal Tribes.—Act No. 1 validates certain proceedings taken under the Criminal Tribes Act, 1871, with respect to certain criminal tribes in Sind, known as Hurs or Lurs.

Port Authorities.—Act No. 2 enlarges the borrowing powers of the Karachi Port Trust, under their Act of 1886.

Museum.—Act No. 3 provides for the creation, maintenance, and management of the Prince of Wales Museum of Western India.

4. BENGAL.

Acts passed—5.

Lunatics.—The Indian Lunatic Asylums (Amendment) Act, 1909 (No. 1), facilitates the procedure for dealing with Calcutta lunatics under the general Indian Lunatic Asylums Act of 1858.

Court of Ward.—The Bengal Court of Wards (Amendment) Act, 1909, makes it easier for the Court of Wards to obtain loans for the consolidation or liquidation of the debts of a ward's estate.

Encumbered Estates.—The Chota Nagpur Encumbered Estates Act, 1876, which is amended by Act No. 3 of 1909, belongs to a type of Acts with which Indian legislators are familiar. The amending Act enables the Government to take over the management of an encumbered estate when its holder "has entered on a course of wasteful extravagance likely to dissipate his property," and makes other amendments in the procedure under the original Act.

Act No. 4 is of no general interest.

[1] See Journal, N.S. vol. x. p. 310.

Intoxicating Liquors and Drugs.—The Bengal Excise Act, 1909 (No. 5), is an important measure, which consolidates the enactments relating to the import, export, transport, manufacture, and sale of intoxicating liquors and intoxicating drugs, with amendments based largely on the recommendations of the Indian Excise Committee's Report of 1905-6. The Bill was the subject of long discussions in the Bengal Council, particularly with respect to the restrictions to be placed on the possession and sale of palm sap or *tari*, which as drawn from the tree is not, but when fermented is, an intoxicating liquor, and with respect to the age at which children or young persons should be allowed to be employed in the sale of intoxicating liquor. In some parts of India the tapping of *tari*-producing trees requires a licence, and this restriction is to be experimentally introduced into parts of Bengal. The intoxicating drugs which are excisable articles, and therefore require a licence for manufacture and sale, include ganja, bhang, and other preparations of the hemp plant (*Cannabis sativa*), but do not include opium, which is a Government monopoly. The cultivation of the hemp plant requires an excise licence.

5. EASTERN BENGAL AND ASSAM.

Act passed—1.

Interpretation.—The single Act passed for Eastern Bengal and Assam is called the Eastern Bengal and Assam General Clauses Act, 1909. It contains general definitions and rules of construction, and answers to the Interpretation Act of the English Parliament.

6. UNITED PROVINCES.

No Acts were passed by the Council in 1909.

7. PUNJAB.

Act passed—1.

Criminal Procedure.—The Punjab Courts (Amendment) Act, 1909, extends the power of the Chief Court to review certain criminal cases.

8. BURMA.

Acts passed—7.

Vaccination.—The Burma Vaccination Law Amendment Act, 1909 (No. 1), makes provision for compulsory vaccination in Rangoon and other municipalities. It supplements for Burma the general Vaccination Act (XIII. of 1880), which was passed in 1880 by the Government of India for the several

provinces which did not then possess local legislatures. Under the new Act the health officer may direct the vaccination of any young child who is exposed to infection, and access for purposes of vaccination must be allowed by occupiers of houses, vessels, and other places. A Superintendent of Vaccination may require "unprotected" persons to be vaccinated after notice, and may require inmates of lodging-houses and factories to be vaccinated forthwith. There are also special provisions about immigrants to Burma. Any person who has travelled on board a vessel for the purpose of coming to Burma to work as a labourer may be inspected, and, if found to be "unprotected," may be sent to be vaccinated. Government vessels, whether British or foreign, are exempted from this provision.

Municipal Government.—The Burma Municipal (Amendment) Act, 1909 (No. 2), enables municipalities to make by-laws for regulating or prohibiting the use of barbed wire.

Boundaries.—The Burma Boundaries Act (1880) Amendment Act, 1909 (No. 3), declares that orders passed by a demarcation or boundary officer are to be based on actual occupation, and are not to determine the title to land.

Embankments.—The Burma Embankment Act, 1909 (No. 4), authorises the impressment of labour, in urgent cases, for the repair of river embankments, and empowers Government officers to require the removal of unauthorised embankments.

Fisheries.—The Burma Fisheries (Amendment) Act, 1909 (No. 6), makes sundry amendments in the Fisheries Act of 1905, and, in particular, prohibits the use of poisons and explosives to facilitate the catching of fish.

Opium.—The Burma Opium Law Amendment Act, 1909 (No. 7), strengthens the law against opium smuggling by enabling magistrates to take security for good behaviour under the Code of Criminal Procedure from persons engaged in, or assisting, the unlawful manufacture, transport, importation, sale, or purchase of opium.

There is also a Repealing Act (No. 5), which repeals an obsolete Act and an obsolete Regulation.

9. REGULATIONS UNDER 33 VICT. C. 3.

Regulations made—2.

Certain *taluqas* or estates have been transferred from the Central Provinces to the Province of Madras, and Regulation No. 1 brings them, approximately, under the same law as that which prevails in the neighbouring part of the Godavari district.

Regulation No. 2 repeals part of the North-West Province Frontier Law (Justice Regulation) of 1901.[1]

[1] See *Legislation of the Empire*, vol. iii. p. 62.

III. EASTERN COLONIES.

I. CEYLON.

[*Contributed by* Lewis Maartensz, Esq., *First Crown Counsel, Ceylon.*]

Ordinances passed—33.

Precedence of Judges.—The Courts (Amendment) Ordinance (No. 3) assimilates the law with regard to the rank and precedence of future Chief Justices and Puisne Justices to that which prevails in other Colonies.

Chief Justices hereafter appointed will take place after the officer in command of His Majesty's Naval Forces on the station if of the rank of an admiral, and the senior officer in command of His Majesty's Troops if of the rank of a General. Future Puisne Justices will take place after Members of the Executive Council.

Noxious Weeds.—The Water Hyacinth Ordinance (No. 4) is intended to prevent the introduction and dissemination of the water hyacinth (*Eichhornia crassipes*) in the Island. Customs officers are empowered to destroy any plant that may be imported, and any person possessing a plant must destroy it. The provisions of the Ordinance prohibiting importation may by proclamation be extended to any other noxious weed or plant.

Crown Lands.—The Crown Landmarks Ordinance (No. 7) provides for the erection and maintenance of permanent landmarks to define the boundaries of lands alienated by the Crown after the coming into operation of the Ordinance. The duty of maintaining the landmarks, replacing or repairing those which have been removed or fallen into disrepair, and of keeping the boundary line between the landmarks clear of vegetation, is cast upon the owner for the time being of such lands. The Government Agent is empowered to call upon owners to replace or repair landmarks and define boundaries, and if they fail to do so, to cause the work to be done and recover the cost by proceedings in the police court.

Indian Coolies.—Ordinance No. 9 gives effect to the recommendations contained in the report of a Commission which sat to inquire into and report on certain questions connected with Labour in the Island.

In form the Ordinance is an amendment of the existing Ordinance (No. 13 of 1889) relating to Indian Immigrant Labourers. By the new Ordinance a prosecution for the offence of illegally quitting service is barred after the lapse of thirty-six months from the commission of the offence. The wages of labourers are payable monthly, within one month of the expiration of the month during which the wages were earned—failure on the part of an employer to pay the wages within the prescribed time is made an offence punishable with a fine which is leviable on the

estate. The imprisonment of Kanganies and labourers on civil process for debt is abolished. A notice to quit service if given by any other person on behalf of the labourer is invalid until the labourer has personally signified to his employer his desire to determine his contract of service. Employers are required to forward to Government Agents in every month a declaration that they have paid the labourers the wages which are then due. The employer is required to prepare and keep up to date a complete register showing all labourers employed by him, including those working on contract. A certified copy of the initial register must be forwarded to the Government Agent. It is made an offence for an employer to take into his employment a labourer (except a Ceylon-born boy or girl under the age of fifteen not previously employed as an estate labourer) without a discharge ticket, or in the case of newly imported labour a certificate from the Ragama Coolie Depôt, or a certificate issued by a magistrate that the labourer has not been employed for thirty-six months on an estate in Ceylon. An employer who takes a labourer into his employment without a discharge ticket is, if the labourer is an absconder to whom money has been advanced, liable to pay the lawful employer double the amount of such advance. As a check against vexatious or indiscreet prosecutions of employers the sanction of the Colonial Secretary is required before criminal proceedings can be instituted.

Criminal Law.—No. 10 amends the Penal Code. S. 2 extends the scope of the offence of "abetment" under the Penal Code. As it now stands, a person who in Ceylon abets the commission of an offence outside the Island cannot be punished. The section extends the definition of abetment so as to include the abetment in Ceylon of the commission of offences outside Ceylon. S. 3 provides for the case of a person using, for the purpose of postage, postage stamps issued by any British or foreign country which have been previously used. S. 5, following a recently enacted Imperial Act,[1] provides that sentence of death should not be pronounced or recorded against a person under sixteen years of age.

Marriages of Kandyans.—Special provision having been made by the amended Kandyan Marriage Ordinance, 1870, for the marriage of Kandyans, there was considerable doubt whether the marriages of Kandyans under the general law of the Island[2] were legal. Ordinance No. 14 (*a*) removes all doubts as to the legality of such marriages whether past or future, (*b*) provides that such marriages should as regards the grounds on which the marriages may be dissolved and otherwise be governed by the Marriage Registration Ordinance (No. 19 of 1907),

[1] 8 Ed. VII. c. 67, s. 103: see Seychelles Legislation, *infra*, p. 372.

[2] Ordinance 19 of 1907 intituled "An Ordinance to Consolidate and Amend the Law relating to the Registration of Marriages other than the Marriages of Kandyans or Mohamedans." See *Legislation of the Empire*, vol. iii. p. 85.

the provisions of the General Marriage Ordinance with regard to dissolution being much stricter than the Kandyan Marriage Ordinance—the latter Ordinance, for instance, allows dissolution by mutual consent, and provides that the marriages of Kandyans under the General Marriage Ordinance should not affect the right of the parties to succeed to property according to the Kandyan law of inheritance.

Juvenile Smoking.—No. 21 penalises the selling of tobacco, cigars, cigarettes, or cigarette paper to a person apparently under the age of sixteen years except upon the written order of some responsible person. Police officers are empowered to seize cigars, cigarettes, tobacco, or cigarette papers in the possession of any person apparently under sixteen years of age who is found smoking or chewing tobacco in any street or public place.

Stamps.—No. 22 amends and consolidates and brings up to date the law relating to stamp duty. The Ordinance is based on the Indian Stamp Act, 1899.[1]

Privy Council Appeals.—Ordinance No. 31 introduces the Colonial Appeal Rules which have been approved by the Judicial Committee of the Privy Council. These rules were prepared to give effect to the views of the Colonial Conference, 1907: that the right of appeal to the Privy Council should be uniform in the case of all the colonial subjects of His Majesty.

The Ordinance repeals the existing enactments regulating the procedure on appeals from the Supreme Court to the Privy Council; and enacts that such appeals should be subject to the Colonial Appeal Rules which, with some modifications, are appended in a schedule.

2. HONG-KONG.

[*Contributed by* C. Grenville Alabaster, Esq.]

Ordinances passed—46.

Civil Procedure.—Ordinance No. 10 details the procedure for obtaining evidence in the Colony for use in a foreign Court. It also makes provision for the payment by a plaintiff of a subsistence allowance in cases where an absconding defendant is committed to prison under s. 569 (2) of the Code of Civil Procedure (No. 3 of 1901).

Evidence.—No. 3 provides that the certificate of an ambassador, consul, etc., of a foreign Power to the effect that any matter in relation to which an application is made for taking evidence on commission under the Evidence Ordinance (No. 2 of 1889) is a civil or commercial matter, or a criminal matter under the Extradition Act, 1870, and that a tribunal in his country

[1] No. 2 of 1899. See *Legislation of the Empire*, vol. iii. p. 5.

is desirous of obtaining the evidence of a witness, shall be evidence of the matter so certified.

Harbour of Refuge.—By Ordinance No. 39 the Governor is given power to construct and maintain certain additional harbour of refuge works which will enable the small craft, now becoming too numerous for accommodation in the present refuges, to shelter from typhoons. The "bunding," wharfing, and embanking of a great portion of the foreshore makes it impossible for the large floating population to beach their boats in a storm, and so breakwaters and other artificial refuges are provided to shelter them.

Larceny.—Ordinance No. 7 repeals the sections of the Larceny Ordinance, 1865, which correspond to ss. 75 and 76 of the Laceny Act, 1861,[1] and substitutes for them the provisions of the Larceny Act, 1901.[2]

Liquors.—The policy of rapidly extinguishing the opium trade initiated by the Home Government rendered it necessary for the authorities to levy duties on intoxicating liquors to balance the loss of revenue from opium. Ordinance No. 27 was consequently passed to make provision for the immediate collection of such duties pending the revision and consolidation of the law relating to intoxicating liquors generally.

An Amending Ordinance (No. 30) provides for the payment to the naval and military authorities, out of the public revenue of the Colony, of an allowance, as a rebate in whole or in part of the duties paid on intoxicating liquors consumed in their messes and canteens.

Magistrates and Criminal Law Amendment (Nos. 1 and 26).—A magistrate is empowered to imprison a defendant for a term not exceeding six months in default of compliance with a recognisance order. Male juvenile offenders may be whipped for any offence whatsoever. Offenders convicted of almost every felony or misdemeanour may now be publicly exposed in the stocks for any period not exceeding six hours. The Magistrates Ordinance, 1890, gives a summary power to impose a fine for perjury and to award compensation for malicious prosecution. The amending Ordinances impose upon the magistrate the duty of first giving the offender an opportunity of explanation. It is made an offence to carry on noisy, noisome, or offensive trades, in breach of any covenant in a Crown lease, without a licence.

Malicious Damage.—The building of a railway in the Colony, intended eventually to be a link in a railway chain from the Colony, through Canton and Hankow in China and the Siberian Railway, to Europe has made it necessary to introduce into the Malicious Damage Ordinance, 1865, sections corresponding to ss. 35 and 36 of the Malicious Damage Act, 1861.[3] The Amending Ordinance (No. 28) also imposes penalties for injuries to trees and plants on Crown land.

Merchant Shipping.—Ordinance No. 9 makes various slight amendments

[1] 24 & 25 Vict. c. 96.
[2] 1 Ed. VII. c. 10. See *Legislation of the Empire*, vol. i. p. 77.
[3] 24 & 25 Vict. c. 87.

in the Merchant Shipping Ordinance, 1899, and imposes upon masters the duty of entering in the official log every occasion on which boat-drill is practised and on which life-saving appliances have been examined.

Protection of Women and Girls.—The provisions of s. 9 of the Criminal Law Amendment Act, 1885,[1] are introduced by Ordinance No. 34.

Public Health and Buildings.—Regulations are made for the exhumation and re-interment of bodies, and various slight amendments with regard to the construction of cubicles, etc., are made by Ordinance No. 11 in the principal Ordinance (No. 1 of 1903).[2]

Public Places Regulation.—The Governor is given power by Ordinance No. 36 to authorise the temporary closing of public places for the purpose of allowing exhibitions, concerts, bazaars, etc., to be held there, and to permit moneys to be charged for admission thereto.

Railways.—The construction of the railway referred to in the notes to Ordinance No. 28 above has necessitated the passing of Ordinance No. 21 to regulate its construction and management. Under it the liability of the railway administration for loss or injury to animals or goods is confined to carriage within the Colony, the liability in respect of goods is confined to goods booked and paid for, lost or injured through the negligence or misconduct of the agents or servants of the railway, and the liability in respect of animals is limited to a certain amount varying with the nature of the animal. No responsibility is incurred for loss or injury in respect of passengers' luggage unless it has been delivered into the custody of a railway official. Moreover, in the case of articles of value (mentioned in the schedule) the responsibility of the carriers is limited unless their nature and value are truly declared.

Steam Boilers.—The use of steam boilers or prime movers without a certificate that they are in good condition is prohibited by Ordinance No. 32.

Stonecutters' Island Amendment.—The island of Hong-Kong is fortified and used exclusively by the military authorities as one of the harbour defences. Ordinance No. 17 prohibits the anchoring of vessels within 100 yards of the shore without authority.

Trade Marks.—Ordinance No. 40 consolidates the law relating to trade marks on the lines of the Trade Marks Act, 1905.[3]

Wireless Telegraphy.—Ordinances Nos. 4 and 42 prohibit the establishment without a licence of wireless telegraphy installations, and give the Governor power to make regulations for the use of such apparatus on merchant ships in the territorial waters of the Colony.

Criminal Law.—Sentence of death in the case of young persons is abolished by Ordinance No. 6 on the lines of s. 103 of the Children's Act, 1908.[4]

[1] 48 & 49 Vict. c. 69.

[2] See *Legislation of the Empire*, vol. iii. p. 96.

[3] 5 Ed. VII. c. 15. See *Legislation of the Empire*, vol. i. p. 127.

[4] 8 Ed. VII. c. 67, and see Seychelles Legislation, *infra*, p. 372.

OTHER ORDINANCES.

31. Appropriation.
37. Chinese Extradition (Amendment).
38. Christian Burial Ground.
20. Companies' Local Registers (Amendment).
25. Dogs (Amendment).
29. Executive Council: Relief of Duties.
41. Foreshores and Sea Bed New Territories Exemption.
2. Hungkom Bay Reclamation.
18. Interpretation (Further Amendment).
8. Life Insurance Companies.
46. Liquor Licences (Amendment).
23. Opium—An Ordinance to Amend and Consolidate the Laws Relating to Opium and its Compounds.
43. Order and Cleanliness (Amendment).
22. Patents (Amendment).
5. Postage Stamp Demonetisation.
16. Prepared Opium (Amendment) (repealed by No. 23).
13. Prison (Amendment).
15. Public Service: Transfer of Duties.
24. Rating (Amendment).
35. Recreation Grounds.
45. Squatters' (Amendment).
19. Stamp (Amendment).
44. Stamp (Further Amendment).
12. Supplementary Appropriation.

3. STRAITS SETTLEMENTS.

[*Contributed by* T. BATY, ESQ., D.C.L., LL.D.]

Enactments passed—24.

Companies (No. 14).—This is a retrospective act, enabling companies, when they subdivide their shares, to make the denomination of the new shares less than $50.

Education (No. 16).—It is made incumbent on municipal commissioners to levy a 1 per cent. annual rate for educational purposes. Rural boards must do the same if requested by the "Government" (a phrase which may have a technical meaning which is not defined, but presumably means the Governor). The disposal of the money (subject to its being devoted solely to the purposes of education within the Colony) is practically left to a new body incorporated by the statute. It is the duty of this body to advise the

Government as to its expenditure and as to educational matters generally. Its composition includes the Singapore Director of Education, the heads of Government of Penang and Malacca, the Colonial Treasurer, two (annual) nominees of the Governor, and two (annual) nominees of the unofficial members of the Legislative Council.

Societies (No. 20).—To cope with Chinese secret societies a stringent Association Law was passed in 1889. This is now recast, and rendered still more sweeping, by the granting of powers to the Governor and Registrar to exact information at any time from societies which have been accorded exemption from the general scheme of the Act.

Post (No. 1).—In the Post Office Act of 1904, a section gives power to the postal officials to open a packet from abroad which is suspected to contravene the revenue law, or which the excise farmer desires to examine. This is now extended to packets (inland or foreign) suspected of containing any goods "in respect of which an offence is being committed," or which the chief police officer, the opium-farmer, or the liquor-farmer wants to examine.

Crown Leases (Nos. 2, 11).—Lessees were found to be prevented from registering their documents of title under the statute of 1886 on account of the provision requiring the whole of the Crown rent due on the head lease to be first paid. Owing to sub-divisions, this was often impracticable. The present statute establishes a scheme for the apportionment of Crown rents. There appears to be no appeal from the decision of the Collector of Land Revenue as to the due appointment; but he is to consider objections carried in on notice. The Crown lessee is to be discharged, and the apportioned rent is made recoverable by Crown process against the sub-lessees.

Nuisance (No. 5).—The deposit of a dead or dying person in any public place, or in any private place without the consent of the owner, is made subject to a fine of $250 and/or six months' imprisonment.

Labuan Assizes (No. 6).—The Straits Settlements having absorbed Labuan, by an Order-in-Council altering the boundaries,[1] it becomes necessary to provide for Supreme Court trial of cases from Labuan; and for this purpose to enable "assizes" to be held at Labuan, and to substitute two assessors for a jury in such cases, owing to the paucity of qualified jurymen. An assessor can only be challenged for favour or for "any other circumstance which in the opinion of the Court renders him improper as an assessor." If one assessor stays away, the trial may go on without him. Crown counsel are accorded the right of reply, even in the case when no witnesses are called.

By a still more remarkable provision—which may be commended to the attention of students of constitutional law—an assessor who is acquainted with any relevant fact must inform the judge, and is thereupon to be sworn and examined like a witness. Each assessor is to give his "opinion" on the

[1] See Journal, N.S. vol. ix. p. 394.

case orally in open Court, and it is to be recorded. If the Court disagrees with both assessors, there will be a new trial with fresh ones. Certain persons are "liable" to serve as assessors, and the authorities are to make out a list of persons "qualified" to serve, which (as the qualifications are nowhere stated) appears to mean the same thing. Although certain classes of persons are "exempted," there seems no reason why, if included in the panel and not objecting, they should not serve as assessors. Assessors are paid: *per contra*, they can be fined the moderate sum of $50 for non-attendance.

Fisheries (No. 9).—An Act of 1872 contained powers for the Governor to make rules generally for the regulation of the use of "fishing stakes," and this power was widely extended by an Act (21) of 1905 [1] conferring on his Excellency very sweeping powers of legislation on fishery matters, *i.e.* prescribing and proscribing methods of fishing, and regulating the use of nets and other appliances (at any rate as regards their nature and the place of their employment). The present statute enables him to appoint fishery officers, and gives them powers of search and seizure. On the other hand, it deprives the Governor of the power of regulating angling and the use of the casting-net. The penalties of 1905 against using explosives to kill fish are extended to the use of poison; and in accordance with a fashion which has spread very much during the last year or two in the Colony, the fine and imprisonment are made cumulative. The stringent provisions for the protection of officials from actions which were contained in the Forests Act of 1908 [2] are substantially repeated. It will be remembered that the short period of three months is prescribed as the limit of time for taking action, and malice and absence of reasonable or probable cause must be alleged and proved.

Prisons (No. 10).—In this statute the Colony takes power to act as jailer for the Malay States and Brunei.

Opium and Intoxicants.—By statutes Nos. 21, 22 the Straits Government takes power to abolish farmers and openly to embark in the opium trade, instead of farming it. It remains, of course, a monopoly. The statute can come into play as and where directed by Order-in-Council. Few substantial variations in the law appear to be made, but among the details it may be noticed that "steam vessel" includes vessels propelled by electricity.

Miscellaneous Acts include measures dealing with *Tamil Immigration* (No. 3), *Marriage* (Nos. 7, 17), *Civil Law Consolidation* (No. 8), *Civil Procedure* (No. 12), *Petroleum* (No. 18), *Registration of Deeds* (No. 23), and a few correcting clerical errors in recent enactments.

[1] See *Legislation of the Empire*, vol. iii. p. 129.

[2] No. 22 of 1908. See Journal, N.S. vol. x. p. 321.

4. FEDERATED MALAY STATES.

In 1909 a Federal Council was created by an agreement between the High Commissioner and the four native rulers. Its establishment had been decided upon in principle in 1907, but the arrangement of details occupied some considerable time, so that the formal Act was not signed until October 1909. "The State Councils will continue to enact measures of a purely local nature, and exercise the same authority as formerly in matters of local government, while the Federal Council deals with all measures of general application, with the annual estimates of revenue and expenditure, and with such other business as is usually dealt with by the Legislative Council in a Crown Colony." [1] The Council consists of the rulers of the four States, the High Commissioner, the Resident-General, the four British Residents and four unofficial members, nominated by the High Commissioner with the approval of the Crown. It met for the first time on December 11, 1909.

(i) FEDERAL COUNCIL.

Enactments passed—6.

Banishment.—The first Enactment makes one uniform law relating to banishment and repeals the State enactments on the subject. Upon written information the Resident may submit to the ruler of any State that there is reasonable cause for believing that the banishment from the State of a particular person is necessary for the safety, peace, or welfare of the State or of any other of the Malay States, or that a person is in control of any unlawful society in the Colonies of Hong Kong or the Straits Settlements. Upon being satisfied as to the Resident's information the ruler may order the person's expulsion or require him to find sureties to be of good behaviour. The ruler having made the order the person is taken before the Resident in order that he may deliver the sentence and inform him of the duration of his banishment. Any person endeavouring to return is subject to summary arrest and shipment from the Colony or rigorous imprisonment. Harbouring a banished person is also punishable unless the offender be a husband or wife.

Interpretation Statute.—No. 2 amends the law relating to the shortening of the language used in Enactments and other written laws.

Finance.—No. 3 makes provision for the common fund of the four States. The total amount is $26,985,393.

Chandu.—No. 4 vests in the Government the sole right of importing chandu into the coastal areas of the Federated Malay States and gives power to regulate its disposal and sale. Chandu is defined to mean "any

[1] See Report of the Acting Resident-General presented to Parliament, Cd. 5373.

preparation of opium or any preparation in which opium forms an ingredient, which preparation is used or intended to be used for smoking, chewing, or swallowing, and includes chandu dross, but does not include any of the alkaloids or salts of the alkaloids of opium." The Enactment is amended by No. 6.

Rubber.—The object of No. 5 is to control dealings in cultivated rubber, which includes "the leaves, bark, latex, and any other produce of any plant or tree on alienated land yielding rubber or gutta percha in any form." Its purchase, treatment, or storage is prohibited except under licence. Among the regulations for the grant of the licence is the provision that it may be refused "to any person who is the agent of or is under any obligation or agreement to act for any individual, corporation, or combination which he [the licensing officer] is satisfied is attempting or about to attempt to secure control of the output of, or the market for, any cultivated rubber." A licence may be cancelled for the same reason. The appeal allowed to the Resident under other sections of the Ordinance does not extend to these two provisions. Every person engaged in the cultivation of rubber must give notice to the officer in charge of the land office of the district and furnish information with respect to the area and number of trees.

(ii) LEGISLATION OF THE COUNCILS OF THE FOUR STATES.

[*Contributed by* T. Baty, Esq., D.C.L., LL.D.]

The legislation of Perak dealt with *Land*, *Mining*, *Registration of Title*, *Waterworks*, *Truck*, *Jinrikshas*, *Criminal Law*, *Dangerous Trades*, *Drainage*, *Tamil Immigration*, *Motor Cars*, *Dogs*, *Exile*, *Government Loans*, *Netherland Indian Coolies*, and *Courts*. Selangor followed suit, and added enactments as to *Railways* and *Intoxicants* and one or two private Acts, but did not deal with *Criminal Law*, as the Perak enactment merely confirmed the Perak statute of 1903, adopting the Straits Penal Code.

It has been observed[1] that the wholesale adoption by a State, which is technically foreign, of the Straits Criminal Laws, "as if they had been expressly enacted within" Perak, is liable to cause great confusion. The words "*mutatis mutandis*" are not used: and what will the result be as to the law of treason? Also, if the Straits Code penalised certain dealings with Government property, will Straits Government property, or Perak Government property, or both, be understood to be included, in Perak? Perak goes so far as to adopt prospectively all future amendments of the Criminal Code by the Legislature of the Straits. Presumably amendments expressly referring to that Code are alone meant.

In Negri Sembilan, the same subjects were dealt with as in Selangor; in addition, *Customary Tenure* was the subject of legislation. This

[1] See Journal, N.S. vol. vii. p. 438, and vol. vi. p. 345.

appears to make the alienation of "customary" land impossible without the consent of the village chief or the Government: nor can it be taken in execution by any one out of the tribe—or at any rate the members of the tribe and allied tribes have a right of paying off the execution creditor. If "customary" land is alienated out of the allied tribes, it ceases to be subject to the customs.

PAHANG followed the other four Legislatures at some little distance, and adopted in 1909 the same statutes as Negri Sembilan, except as to Customary Tenure. It also adopted the Straits *Criminal Law* in the inelegant and illogical manner usual in the other territories; and was obliged to pass a retrospective law validating *Patents* granted under a statute which had never been made executory by the issue of the due proclamation. Further, it dealt with *Pawnbroking* and *Reformatory Schools*, subjects which had already been provided for in the rest of the peninsula; and it relieved its ruler "on the ground of advancing years" from the burden of public affairs by transferring "all powers and functions" to his son.

5. MAURITIUS.

[*Contributed by the Procureur-General*, A. HERCHENRODER, ESQ.]

Ordinances passed—35.

Licences.—Ordinance No. 1 raises a licence duty of Rs. 5 on cycles as defined by Art. 1 of the Ordinance, and increases the tax on motor-cars from Rs. 22 to Rs. 60 per annum.

No. 2 permits licensed hawkers and sellers of vegetables and fruits to hawk and sell the same, whether in the green or dry state, provided they are grown in the Colony.

Minors' Property.—By No. 3 the Supreme Court is given power to order the erasure of an inscription of the minor's legal mortgage burdening an immovable property which it may be in the interests of all concerned to sell.

Defaced Coins.—No. 4 adapts to the Colony the relevant provisions of the Indian Coinage Act, 1906.[1] The measure originated in the attention of the Government being called in 1907 by the two local banks to the large number of soldered rupee coins in circulation.

Licences (Municipal).—No. 6 reduces the municipal licence paid by owners of plying boats from Rs. 48 to Rs. 36 per annum.

Telephones.—No. 8 amends the Telephone Ordinance, 1907,[2] so as to empower the Governor in Executive Council, when granting a licence to any undertaker under that Ordinance, to fix in such licence a period during

[1] No. 3 of 1906. See *Legislation of the Empire*, vol. iii. p. 24.
[2] No. 19 of 1907. See *Legislation of the Empire*, vol. iii. p. 165.

which the Government may not purchase any telephone erected under the licence; it also allows the undertaker one year's notice prior to intended purchase.

Royal Commission.—By Ordinance No. 9 full powers were given to the Royal Commissioners appointed by His Majesty the King to inquire into the conditions and resources of the Colony. The Ordinance was drafted on the lines of the Commissioners (Examination of Witnesses) Ordinance, No. 19 of 1897.

Railways.—An amending Ordinance (No. 12) gives statutory authority to one of the conditions, in the Railway Bye-laws, attached to the permission of travelling in goods brake-vans, viz. that the Railway Department shall not be responsible for any accident or delays, or from any injuries or loss arising therefrom.

Children and Young Persons (Abolition of Death Sentence).—Ordinance No. 13 places on the Statute Book a measure borrowed from s. 103 of the Children's Act, 1908,[1] providing for the abolition of death sentence in the case of children and young persons: the age limit is that fixed by the Imperial enactment.[2]

Reward Funds.—A Consolidating Ordinance (No. 16) brings together the following several funds locally known as Reward Funds: (*a*) the Police Reward Fund; (*b*) the Forest Reward Fund; (*c*) the Inland Revenue Reward Fund; (*d*) the Post Office Reward Fund; (*e*) the Railway Reward Fund; (*f*) the Customs Reward Fund.

By Art. 7 the Governor is empowered generally to grant a reward or gratuity out of any fund under the Ordinance to the widow or children of any officer to whom the fund applies—in special circumstances, and if this can be done without unduly depleting the fund.

Electric Light and Power.—An Amending Ordinance (No. 17) gives (*a*) powers of control to the Director of Public Works and Surveys over the technical nature of any intended electrical undertaking and works connected with the same; (*b*) enables "pressure" to be defined by regulation; (*c*) extends the powers of appeal to the Governor in Executive Council; and (*d*) authorises any undertaker to control and inspect within reasonable bounds the installation of any consumer.

Magistrates.—The Bench Jurisdiction (Extension) Ordinance (No. 18) places within the jurisdiction of the Bench of Magistrates offences under Arts. 122 and 123, par. 2, of the Penal Code (embezzlement committed by public depositaries and accountants, and by agents, clerks, or servants of the Government or of public depositaries) and under Art. 249, par. 2 (indecent assault), which were hitherto within the exclusive jurisdiction of the Assize Court with a jury, no matter the comparative unimportance of the case.

Widows' and Orphans' Pension Fund.—An amending Ordinance (No. 19)

[1] 8 Ed. VII. c. 67.

[2] See Seychelles Legislation, *infra*, p. 372.

has for its main object the adoption of certain provisions favourable to associates of the Fund continued in the Perak Enactment No. 2 of 1908.

Post Office.—An amending Ordinance (No. 20) reduces the sea-postage payable to masters of non-mail vessels from 4 to 2 cents of a rupee for every letter sent by such vessel.

Quarantine.—An amending Ordinance (No. 23) improves the definition of "healthy vessel" under the quarantine laws of the Colony so as to allow any ship producing evidence that she has worked in quarantine at any infected port to be admitted to pratique on her arrival in the Colony, whether she has taken cargo or not at that port, provided that she otherwise comes within the definition of a healthy vessel.

Customs Tariff.—An amendment of the Tariff by Ordinance No. 26 alters the duty leviable on matches and exempts books and music generally from payment of duty.

Harbour Dues.—An amending Ordinance (No. 28) reduces the anchorage dues to R. 0.08 per ton register instead of R. 0.23 in the case of steamers entering the harbour for the exclusive purpose of coaling, with a proviso charging an additional due of R. 0.05 per ton register for every subsequent twelve hours' or part of twelve hours' daylight over and above a period of twenty-four hours, up to the maximum charge of 23 cents of a rupee provided by the main enactment.

Penal Code.—The object of Ordinance No. 29 is to correct certain clerical errors in Ordinance No. 22 of 1901,[1] and at the same time to introduce into the Colony the principles of the English law on seditious libel. It also adds a provision against the compounding of offences on the lines of that existing in the Indian Penal Code.

Criminal Evidence.—Ordinance No. 30 introduces into the Colony the provisions of the Criminal Evidence Act, 1898.[2]

Bankruptcy.—Arts. 1, 4, 5, and 6 of an amending Ordinance (No. 32) make agents of firms carrying on business in Mauritius on behalf of principals residing out of Mauritius criminally responsible for their own acts where such acts in the case of a principal would be declared as fraudulent by the Bankruptcy Law.

Arts. 2 and 3 reproduce provisions of the principal Bankruptcy Ordinance with an addition to the definition of the word "debtor" similar to that which was made to the corresponding section of the principal Bankruptcy Ordinance of Hong Kong by s. 3 of the Hong Kong Ordinance No. 6 of 1902.[3]

Art. 7 amends par. iii. of Art. 49 of the Bankruptcy Ordinance,

[1] See *Legislation of the Empire*, vol. iii. p. 150.

[2] 61 & 62 Vict. c: 36. See *Legislation of the Empire*, vol. i. p. 17.

[3] This additional definition of the word "debtor" has for its object to meet the decision of the House of Lords in the case of *Cooke* v. *The Charles A. Vogeler Company*, (1901) A.C. 102.

1887, which defines that part of the bankrupt's property which shall not be divisible among his creditors, with a view to restrict the application of the paragraph to property which has been obtained within one month prior to the petition.

Art. 9 extends the powers of seizure under Art. 62 of the main Ordinance to the property of a "debtor," as well as of a "bankrupt," within the meaning of the enactment.

Art. 10 simplifies the procedure in the case of a reference of the parties by the Judge of Bankruptcy to the Supreme Court.

Art. 11 fixes the amount of small bankruptcies at Rs. 5,000 for purposes of summary procedure.

By Art. 12 power is taken to reach criminally principals or agents of principals who sell away at ridiculously low prices their stock-in-trade on the eve of bankruptcy, with intent to defraud their creditors: the same provision *qua* agents, appears as par. xviii. of Art. 4.

Art. 13 empowers all magistrates (irrespective of the district assigned to them) to order a provisional seizure of the goods of any trader suspected of an intent to remove the same in fraud of the rights of his creditors.

Art. 14 simplifies the procedure in the case of prosecutions in minor cases under the Bankruptcy Ordinance and adds such cases to the jurisdiction of District Magistrates.

Art. 15 determines the value of the stamp to be affixed on bankruptcy petitions.

Aliens.—The Banishment Ordinance (No. 34) has for its object to make regulations for the expulsion of aliens, borrowed from the Straits Settlements Banishment Ordinance No. IV. of 1888, XVII. of 1899, VII. of 1906, and VII. of 1907, and from ss. 3 and 4 of the Aliens Act, 1905.[1]

Minors' and Interdicted Persons' Personal Property.—Ordinance No. 35 completes such of the provisions of the Civil Code for the protection of the property of minors in the sense of the French law of February 27 and 28, 1880, which regulates the powers of alienation by the guardian, of incorporeal chattels or rights belonging to a minor or an interdicted person.

6. SEYCHELLES.[2]

Ordinances passed—14.

Leprosy.—Ordinance No. 1 renders the notification of leprosy compulsory, and establishes a procedure for the care and treatment of lepers similar to that in force regarding lunatics. The next-of-kin of the leper may enter into

[1] 5 Ed. VII. c. 13.

[2] Based upon the Annual Report (Cd. 4964-17) presented to Parliament.

a bond for his proper maintenance and for the carrying out of such precautions as the Chief Medical Officer may prescribe. If the next-of-kin are unable or unwilling to make adequate provision for the patient, he may be committed, by order of the Chief Justice, to the Government Asylum, where he is to be treated as a pauper or paying patient according to the means of his "next-of-kin."

Midwives.—Ordinance No. 2 compels every certificated midwife to come up for re-examination by the medical examiner every two years.

Juvenile Offenders.—Ordinance No. 4, which was introduced on instructions from the Secretary of State, provides that sentence of death shall not be pronounced or recorded against any person under the age of sixteen. It corresponds with s. 103 of the Children's Act, 1908.

Labour.—The main Ordinance (No. 5) and No. 41, which amends it in certain details, deal with labour on outlying islands and form a complete labour code for this important part of the Colony.

The previous code, Ordinance No. 6 of 1902, with its amending Ordinance, is repealed and replaced by a law meeting the present requirements. Virtually, the verbal contract is abolished, as all contracts whether written or verbal have to be entered into before the Crown Prosecutor. This provides a great safeguard for both master and man, and reduces to a minimum the possibility of litigation as to the terms of agreement. The very serious abuse of labourers taking advances and then refusing or neglecting to proceed in the vessel provided to convey them to the islands is met by a simple but effective procedure, similar to that adopted in merchant shipping. The master makes complaint to the police, who forthwith arrest the deserter, for such he is, and convey him on board the vessel after giving warning that he has a right to be taken before the stipendiary magistrate to state his case. If he elects to state his case in court and the magistrate finds that his appeal is based on frivolous grounds, the magistrate has the power to order that the deserter shall pay the costs incurred by the master. For the better preservation of discipline, the manager of an island is given limited powers of imprisonment or in lieu thereof of inflicting a fine not exceeding one day's pay for a first offence and Rs. 5 for a subsequent offence. The power of imprisonment was given under the previous Ordinance, but the owners of islands specially asked that the fine should be added as an alternative. All penalties are subject to review by the visiting magistrate, from whom an appeal also lies. No cases of abuse of the powers entrusted to managers in this respect have come to light. In other respects the new code differs but slightly from the former law.

Notification of Diseases.—Ordinance No. 6 adds tuberculosis, chicken pox, whooping cough, and jiggers (chingoe) to the list of diseases the occurrence of which has to be notified to the medical authorities.

Native Labour.—Ordinance No. 7 prohibits the recruiting of labour for places outside the Colony, except under licence approved by the Governor.

It provides for the payment of repatriation expenses by persons so recruiting labourers.

Restriction of Royal Titles in Trade.—Ordinance No. 9 prohibits the use of prefixes suggesting Royal or Government patronage in connection with the name of a trading company.

IV. AUSTRALASIA.

1. COMMONWEALTH OF AUSTRALIA.

[*Contributed by* HERMAN COHEN, ESQ.]

Public Acts passed—29.

The bulk of the legislation is, as usual, Supply and Appropriation Acts. Many Acts are merely amending Acts passing a multitude of details, no doubt found necessary by experience of the working of the respective principal Acts; they do not, as a rule, embody any new principle; (the Government wisely prints in each case the principal Act as amended by each successive Act). Amending Acts in 1909 were the Australian Industries Preservation Act (1906-1909), the Commonwealth Electoral Act (1902-1909), the Defence Act (1903-1909), the Invalid and Old Age Pensions Act (1908-1909), the Patents Act (1903-1909), and the Referendum (Constitution Alteration) Act (1906-1909).

Coinage.—By Act No. 6 British and Australian coins of current weight are recognised and the amounts of legal tender is the same as in England. What coin is or is not "of current weight" is determined by the rule of its own country—*i.e.* either that of the United Kingdom or of Australia (where, apparently, the figures are settled by proclamation).

Telegraph.—Act No. 9 gives the Governor-General power in any "emergency"—*i.e.* when there is anything "in the nature of war or danger of war"—to assume control of cables and wireless telegraphs.

Marine Insurance.—Act No. 11 is a reproduction of the English Marine Insurance Act, 1906,[1] with slight modifications in the arrangement, notably the placing of the definition section at the beginning instead of the end. The Act applies to "marine insurance other than State marine insurance and to State marine insurance extending beyond the limits of the State concerned."

Finance.—The Surplus Revenue Act (No. 18) deals with purely internal details of Commonwealth finance.

Elections.—The Commonwealth Electoral Act (No. 19) legalises voting by post and makes many provisions for the purpose. Voters who do not expect to be within five miles of a polling place of their division on the election day, or being women will "on account of ill health" be unable to

[1] 6 Ed. VII. c. 41.

attend, or, generally, voters who will be prevented "by serious illness or infirmity" from polling, may vote through the post.

High Commissioner.—Act No. 22 empowers the Governor-General to appoint a High Commissioner in the United Kingdom, his salary to be £3,000 per annum; he must not be connected with any company or syndicate.

Monopolies.—The Australian Industries' Preservation Act (No. 26) strikes again (being an amending Act) at the repression of monopolies by penalising exclusive dealing and improper refusals to sell.

Bills of Exchange.—Act No. 27 embodies a uniform law for the whole of the Commonwealth in the form, *mutatis mutandis*, of the English Act[1] and repeals the whole of the State legislation on the subject. S. 65 (2) is an addition to s. 60 of the English Act in the following terms:[2] "An order on demand, drawn by or on behalf of a banker at one place of business on and payable by the banker either at the same or at some other place of business, shall, for the purpose of the protection of the banker under this section, be deemed to be a bill payable to order on demand." Ss. 85, 86 differ slightly from the corresponding sections of the English Act, and s. 88 incorporates the Crossed Cheques Act, 1906.[3]

Labour Disputes.—The Commonwealth Conciliation and Arbitration Act (No. 28) protects employees and masters from detriment—*e.g.* dismissal or discontinuance of contract—by each other merely by reason that either is a member of an organisation or "is entitled to the benefit of an industrial agreement or award."

Seamen's Compensation.—Act No. 29 is on the well-known lines of the Workmen's Compensation Acts adapted to the particular calling in question.

2. NEW SOUTH WALES.

[*Contributed by* Norman Bentwich, Esq.]

Public Acts passed—28.

Supply.—Nos. 1, 4, 16, 17.

Inebriates.—No. 2 amends the principal Act of 1900[4] in a number of particulars. An inebriate may be placed under charge of a guardian who shall (*a*) prescribe for him a place of residence either in his own house or in the patient's house; (*b*) provide medical attendance; (*c*) may deprive him of intoxicating liquor and drugs; (*d*) prevent him from leaving his residence; (*e*) may warn persons from supplying him with intoxicating liquors or

[1] 45 & 46 Vict. c. 61.
[2] Cf. note to that section in Chalmers's *Bills of Exchange Act*.
[3] 6 Ed. VII. c. 16. See *Legislation of the Empire*, vol. i. p. 131.
[4] No. 32 of 1900. See *Legislation of the Empire*, vol. i. p. 459.

narcotic drugs. Any person so warned in writing who disregards the warning is liable to a penalty not exceeding £20 (s. 3).

The Governor may establish institutions for the reception and treatment of inebriates which shall be under the control of the Inspector-General of the Insane; and a penalty is imposed upon anybody interfering without lawful authority with such an institution or its inmates (s. 4).

When an inebriate is convicted of certain offences the Court may (*a*) either discharge him on his entering into recognisances not to take any intoxicating liquor, and to report himself every three months to the principal officer of police; or (*b*) may order him to be placed for a period of twelve months in a State institution, which period may be extended from time to time on the order of a judge or a master in lunacy. The Governor may release on licence any person detained in a State institution, and may revoke such licence, which may also be revoked by a justice summarily on proof that the licensee has been guilty of breach of any condition contained in it (s. 5).

Motor Traffic.—No. 5 empowers the Governor to make regulations for the use of motor vehicles in a number of ways. Part III. makes it an offence to drive a motor vehicle upon a public street negligently, furiously, or recklessly, or at a speed dangerous to the public; and in considering whether an offence has been committed the Court shall have regard to all the circumstances of the case, including the nature, condition, and use of the street, and to the amount of the traffic which actually is at the time and which might reasonably be expected to be upon the street. Notice of the intended prosecution must be given or sent to the person charged or to the owner of the car within such time after the offence is committed, not exceeding fourteen days, as the Court thinks reasonable. The penalty for an offence is a fine not exceeding £20 and the suspension of the licence (Part III.).

When an information is laid by a person other than a member of the police force, and the proceedings are dismissed or withdrawn, the Court may order that the said person pay to the defendant, in addition to any costs, such compensation for loss of time as seems reasonable (s. 15).

Forestry.—No. 6 empowers the Governor to purchase, resume, or appropriate land for the purpose of a State Forest. Within three years of the commencement of the Act, or so soon as practicable, the Minister shall cause a classification of the forest lands of the State to be made for the purpose of determining which are suitable to be (*a*) permanently dedicated as State forests, (*b*) temporarily reserved as timber reserves. Timber-getters' and other licences, to have effect for a year or any less term not less than a month, may be granted by the Minister (s. 14).

After open inquiry and report by the local Land Board the Minister may, when land is difficult of access, or the getting of timber would entail heavy expenditure, grant exclusive rights to take timber; but such rights shall not be granted in respect of an area exceeding 10,000 acres or for a period exceeding fifteen years (s. 15).

Fixed conditions are to be attached to such an exclusive right, including the obligation of the holder to furnish a monthly return, giving the particulars of the number of logs and superficial contents of timber removed from the land (s. 16).

Provision is also made for the granting of saw-mill licences, for permits to graze and to occupy State lands, for the royalty to be paid on timber felled or removed from the State forests and reserves, and for the regulation of ring-barking trees (ss. 18-21).

Generally it is provided that licences and permits under the Act are not to be transferable without the consent in writing of the Minister; and where practicable the Minister is to impose conditions for afforestation and re-afforestation in all exclusive rights or licences (ss. 23-24).

Fire Brigades (No. 7).—This statute consolidates and amends the law relating to the extinguishing of fires, constitutes a Fire Brigades Board, and contains numerous provisions defining the powers and duties of the Board. The Board is to be a body corporate consisting of a President appointed by the Governor and four members, of whom two are elected by the councils of certain municipalities in the State, who shall hold office for three years but may be re-elected. The votes of the councils of the municipalities are to be proportionate to the amount of their contribution to the fund administered by the Board. The other two members are to be elected by the insurance companies and the volunteer fire brigades respectively, and will hold office upon the same terms.

The President of the Board is to receive a salary of £300 from the Consolidated Revenue Fund and the members such fees from the fund, not exceeding in the aggregate £600 for any year, as may be prescribed by by-laws (ss. 7-12).

The Board is to establish and maintain permanent fire brigades and pay subsidies to volunteer fire brigades. It may recover charges for attending any fire, and it is each year to make an estimate of the expenditure required in each fire-district, provided that the amount estimated to be required as a contribution from each district shall not exceed one farthing in the pound on the unimproved capital value of ratable land in the district. The amount of the contribution shall be paid in equal thirds by the municipality or shire, by insurance companies, and by the Colonial Treasurer. The insurance companies and owners of property are to send in annually to the Board a return of the amount received and paid respectively by way of fire premiums (ss. 34-40).

Seat of Government: Surrender.—No. 14 provides for the surrender by the State to the Commonwealth of the territory which is required for the purposes of the seat of Government of the Commonwealth, consisting of an area of about 500 square miles in the counties of Murray and Cowley.

Closer Settlement (No. 14).—This Act amends the principal Act upon the

subject of 1904,[1] and entitles any male person over eighteen years of age, and any female over twenty-one, to apply for a settlement purchase under certain conditions. Numerous other detailed changes are made in the regulations governing land set apart for closer settlement; and as regards costs of proceedings by way of appeal for determining the value of land resumed, it is provided that (*a*) when the value determined by the Court is equal to or less than the amount at which the Government has offered to purchase the land, the owner shall pay the costs of the appeal; (*b*) when the value is equal to or greater than the amount which the owner claims, the Crown shall pay the costs; (*c*) when the value is between the two amounts, a most elaborate system is set up for fixing the proportion of the owner's taxed costs that the Crown is to pay.

Defamation Amendment (No. 22).—It is provided by this Act that it shall not be necessary to set out in any information, indictment, or criminal proceeding against the publisher of any obscene or blasphemous libel the obscene or blasphemous passages, but it shall be sufficient to deposit the book or newspaper or other document with the information, etc., together with particulars defining the objectionable passages (s. 3).

No criminal prosecution shall be commenced for libel without the order of a judge of the Supreme Court or of a District Court. Such application shall be made on motion to the person accused, who shall have an opportunity of being heard against it (s. 4).

S. 5 specifies a number of matters of public interest for the publication of which no criminal or civil action for libel shall lie if made in good faith for the information of the public. The publication may be deemed to be privileged though made in pursuance of a contract for valuable consideration (ss. 5 and 6).

The defendant may give in evidence in mitigation of damages that the plaintiff has recovered compensation in other actions for libel to the same purport or effect (s. 7).

If upon the hearing of a criminal proceeding for libel the Court (*i.e.* a stipendiary or police magistrate) is of opinion that the libel was trivial, it may, where the defendant consents, deal with the case summarily and impose a fine not exceeding £50 (s. 9).

The proprietor of a newspaper may be compelled by a judge of the Supreme Court to supply to the person aggrieved the name and address of the writer of an article or letter which he has published (s. 11).

Justices (No. 24).—The Act makes further provision for the appointment of stipendiary and police magistrates and also amends certain statutes dealing with their powers and jurisdiction. It enables (*inter alia*) the Minister to appoint any person to act as a stipendiary for a time not exceeding fourteen days while the magistrate is absent from his duties.

Aborigines' Protection.—No. 25 creates a Board to consist of the

[1] No. 37 of 1904. See *Legislation of the Empire*, vol. i. p. 485.

Inspector-General of Police as chairman, and not more than ten other members to be appointed by the Governor, for the protection and care of aborigines. The Board may appoint local committees to act in conjunction with it and local guardians of aborigines. The duties of the Board are (*a*) to distribute and apply moneys voted by Parliament for the relief of aborigines; (*b*) to distribute blankets and clothing; (*c*) to provide for the custody and education of their children; (*d*) to manage and regulate the use of reserves. Power is given to apprentice female and infant natives and to remove natives camped in the vicinity of townships. It is made an offence to give or sell liquor to any native except on the prescription of a medical practitioner, and for any person not being an aborigine to wander with any native, without being able to show that he has a fixed place of residence and lawful means of support, and that he wandered for some temporary and lawful occasion only.

Industrial Disputes.—No. 26 amends the principal Act of 1908,[1] and adds to the list of "necessary commodities" in respect of which strikes are forbidden coal, gas, water for domestic purposes, and any article of food the deprivation of which may tend to endanger human life and cause serious bodily injury (s. 2).

It declares unlawful a meeting of two or more persons assembled for the purpose of instigating to or aiding in a strike or lock-out or managing or aiding in the continuance of a lock-out or strike already in existence, when such lock-out or strike is in respect of a necessary commodity or of the transport services of the State in relation thereto. Any person who takes part in such a meeting, and who has reasonable grounds to believe that the probable consequences of a continuance of the strike or lock-out will be to deprive the public either wholly or to a great extent of the supply of a necessary commodity, is liable to imprisonment for twelve months.

Any person who as principal or agent enters into a contract or engages in any combination with intent to restrain the trade of the State in any necessary commodity to the detriment of the public, is liable to a penalty not exceeding £500, and the same penalty is imposed on any person who monopolises or combines with any person to monopolise any part of the trade of the State with the same intent (s. 4).

Dentists (No. 27).—This Act amends the Act of 1900[2] and creates a Dental Board consisting of eight members—two qualified medical practitioners and four registered dentists to be appointed by the Governor every three years, and the head of the faculty of dentistry in the University of Sydney and the President of the United Dental Hospital of Sydney, *ex officio*.

On the recommendation of the Board, the Governor may make regulation for the control of the profession.

[1] No. 3 of 1908. See Journal, N.S. vol. x. p. 327.

[2] No. 45 of 1900. See *Legislation of the Empire*, vol. i. p. 461.

Factories and Shops (No. 28).—This is another amending Act amplifying the principal Act of 1896 in a number of particulars. A penalty not exceeding £10 is imposed upon any person occupying an unregistered factory; an inspector may notify the occupier of any factory that it is unfit for such a purpose, and specify the requirements which he deems necessary to render it fit. An appeal from the notice of the inspector is allowed to the Minister. In certain cases dressing-rooms for women employees and special means of escape from fire must be provided; and the employment of women and young persons may be altogether prohibited by the Minister in connection with machinery which is regarded as dangerous. The occupier of a factory is to keep a record each week of the occasions on which he works overtime, and he must if required prove that such overtime working was done *bona fide* to meet the exigencies of trade; when he fails to satisfy the Minister accordingly three times within any twelve months, he shall not thereafter be entitled at any time to avail himself of the right of working overtime (s. 14).

In a factory where any Chinese work or where any person is employed in manufacturing articles of furniture, no person shall work before 7.30 in the morning or after 6 o'clock in the evening, or on Saturday after one in the afternoon or on Sunday at all (s. 16).

Finally, power is given to the Governor to make a number of additional regulations in respect of factories and shops.

3. QUEENSLAND.

[*Contributed by* W. F. Craies, Esq.]

Acts passed—21.

Constitution.—9 Ed. VII. No. 18, amends the Constitution Act Amendment Act of 1896,[1] and provides as to members of the existing and future legislatures (*a*) that one member of the Legislative Assembly who is for the time being recognised as leader of the Opposition is and shall be entitled to £500 instead of £300 a year, in addition to the allowances granted by s. 4 of the Act of 1896 for mileage and passage money; (*b*) that the allowances to a member of Parliament shall be payable "from the day appointed in the writ [of election] as the day for taking the poll for his election until the day appointed in the writ for taking the poll for the election of his successor, and for that purpose he shall be deemed to be a member notwithstanding that Parliament has been dissolved."[2] Where a vacancy is caused otherwise than by a dissolution his allowance runs only till the

[1] 60 Vict. No. 5.

[2] Under the Act of 1896 the allowance ran "from the day on which the writ of election is returnable until he ceases to be a member."

member ceases to be a member, and his successor's allowance runs from the day appointed by the writ for taking the poll for *his* election.

Rabbit Boards.—The Rabbit Boards Acts, 1896 to 1905,[1] which had been continued by various Acts until the end of the session of 1909, expired on August 30, 1909. By 9 Ed. VII. No. 9, they were revived as from that date, and with amendments continued to December 31, 1910.[2]

Railways.—9 Ed. VII. No. 19, fixes the annual salary of the Commissioner of Railways at £2,250 per annum, charged on the Consolidated Fund.[3]

Justices of the Peace.—9 Ed. VII. No. 11, amends the Justices Act, 1886. It provides (1) that in certain districts and for certain purposes a police magistrate if present shall alone constitute a Court; (2) for ordering imprisonment in default of sufficient distress in the case of decisions awarding a pecuniary penalty or compensation or sum of money or costs; (3) for payment of instalments on account of sums adjudged by an order or decision and reduction of any term of imprisonment proportionally to the amount paid;[4] and (4) for postponing the issue of warrants of commitment in lieu of sufficient distress.

Ecclesiastical Property.—The Presbyterian Church of Queensland was incorporated by Letters Patent issued in 1876 under the Religious and Charitable Institutions Act of 1861 (No. 19). 9 Ed. VII. No. 7, provides machinery for vesting in this corporation real or leasehold property now or hereafter held by any person in trust for the Church or for any congregation thereof or for any purpose in connection with the Church or any congregation thereof. The General Assembly of the Church is empowered by resolution to apply the Act to particular property coming within the scope of the Act, with the consent of the congregation affected. On evidence that the necessary resolutions have been passed the property is to be entered in the land register as vested in the corporation.

Companies.—9 Ed. VII. No. 13, amends the Queensland Companies Acts, 1863 to 1896, as to mortgages by incorporating provisions adapted from ss. 93-107 and 212 of the Imperial Companies Consolidation Act, 1908, and as to defunct companies by an adaptation of s. 242 of that Act.

It enacts a new scale of fees for registration of companies and company documents, which applies also to British and foreign companies (s. 23); and extends the provisions of the State laws as to notice of increase of capital to all companies including British and foreign companies (s. 22). Provision is made for the grant of licences to hold land to registered foreign companies and for their winding up so far as they carry on operations in Queensland (s. 24); and for winding up estates which comprise shares not fully paid up in a company (s. 25).

[1] See Journal, O.S. vol. ii. p. 177, N.S. vol. vii. p. 438.

[2] S. 53 (2) of the Act of 1896 and s. 2 of the Act of 1903 are repealed: 9 Ed. VII. No. 9, s. 2 (2).

[3] The Act seems to be limited in operation to the existing holder of the office.

[4] Cf. the Summary Jurisdiction (England) Act, 1879 (42 & 43 Vict. c. 49), ss. 7, 21.

Mines.—9 Ed. VII. No. 15, regulates mining on private land. By s. 6 the following rules are made as to property in minerals:

(1) Gold below the surface of all land in fee simple in Queensland, whether alienated in fee simple or not so alienated from the Crown, and if so alienated whensoever alienated, is the property of the Crown.

(2) The same rule is applied to silver unless it is under land alienated in pursuance of certain specified enactments.

(3) Copper, tin, opal, or antimony on or below the surface of all land within the limits of a goldfield or mineral field are the property of the Crown if under land not alienated in fee simple from the Crown on, or alienated or contracted to be alienated in fee simple from the Crown since March 1, 1899.

(4) Coal on or below the surface of land subject to the Agricultural Lands Purchase Act of 1901 [1] is the property of the Crown whether the lands have or have not been alienated in fee simple from the Crown by March 1, 1910.

(5) All other minerals are the property of the Crown which are on or under land not alienated in fee simple from the Crown by March 1, 1910.

All Crown grants and leases (under any Act relating to Crown land) issued on or after March 1, 1910, must contain a reservation of all gold and minerals on or under the land and of the right of access to search for and work mines of gold and minerals on any part of the land.

Power is given to exempt wholly for a time private lands in a district or specified portions of private lands. The Crown may resume lands for mining and grant mining tenements comprising private lands, with the exception of certain specified classes of private land. The owner of the land may acquire a mining tenement thereon. No person may enter or remain on private land for mining unless a mining tenement has been registered or a permit has been issued by the Warden.

The grant of a mining tenement gives the grantee a right to enter and mine subject to compensation fixed on a scale and in manner provided by the Act.

Workers' Compensation.—The Workers' Compensation Act, 9 Ed. VII. No. 16, extends the provisions of the Act of 1905 [2] to cases of disablement for three days and upwards. Under the earlier Act the period was "two weeks."

Workers' Dwellings.—9 Ed. VII. No. 10,[3] enables the State to assist persons in receipt of small incomes to provide homes for themselves. The applicant must not have more than £200 a year, must be free-holder or possessor of land of a specified character, and must not be owner of a dwelling-house in Queensland or elsewhere. The Government

[1] See *Legislation of the Empire*, vol. i. p. 517.
[2] See Journal, N.S. vol. vii. p. 440.
[3] Cf. the Act (62 & 63 Vict. c. 44) for the United Kingdom.

is authorised to raise £250,000 by debentures, and to advance to the applicant a sum not exceeding £300 nor two-thirds of the fair estimated value of the site and the proposed dwelling-house. The advance is by first mortgage repayable by instalments, and is only for the purpose of erecting houses as homes for the applicants and their families. Till the advances are paid off dealings with the land are subject to certain conditions as between the owner and the Board which makes the advances and works the power of the Act.

Land.—9 Ed. VII. No. 20, repeals a large number of former Acts relating to lands in Queensland,[1] and makes considerable amendments of details, including provisions for declaring an area open for "group" selections to be held by bodies of settlers.

Education.—9 Ed. VII. No. 7, provides for the incorporation and endowment of a university for Queensland, and the affiliation of existing and future educational institutions. The university will be governed by a Senate of twenty with power to make statutes subject to approval by the Governor in Council. Provision is made for creating a Council of the university which when fully established will elect half the Senate. The university is to maintain faculties of arts, science, and engineering until other order is taken, and may add other faculties. Provision is made for evening lectures for resident students and diplomas of education as well as degrees.

When any public authority is empowered by law to require any person to submit to examination as to his proficiency in any branch of knowledge or to produce evidence of such proficiency as a condition of obtaining any appointment, scholarship, or other reward of merit, or of being admitted to any profession, calling, or office, the Government may require the Senate to undertake the examination of persons who desire to submit themselves for examination in such branches of knowledge (s. 23).

Supplementary List of Acts Passed in 1909.

Nos. 1, 2, 3, 4, 14.—Appropriation.

No. 5.—Acquisition and working by State of McGregor Creek and Tranvy Cattle Creek Extension.

No. 6.—Validation of agreement before Commissioner of Railways and councils of town of Warwick and shires of Clifton, Glengallan, and Rosenthal, as to construction of a State railway from Warwick to Maryvale.

No. 12.—City of Brisbane water supply and sewerage.

No. 17.—Validation of agreement between Secretary for Railways and Rockhampton Harbour Board, as to branch railway from Alma to Rockhampton, and Gladstone main line.

No. 21.—Tuchekoi Forest Settlement.

[1] In particular Acts relating to Pastoral Leases and Co-operative Communities, Land Settlement, and "Special Selections."

4. SOUTH AUSTRALIA.[1]

[*Contributed by* A. Buchanan, Esq.]

Land Legislation.—*Advances to Settlers on Crown Lands.*—Act 994 of 1909 increases the limit of the advance to be made to any one settler from £400, as fixed by the original Act, No. 963 of 1908,[2] to £600.

Irrigation and Reclaimed Lands.—Act 979 of 1909 amends the principal Act, 953 of 1908,[3] by restoring to the local authorities the jurisdiction and property which, by the principal Act, had been transferred to the Irrigation Boards (ss. 6-9), and by providing that differences between local authorities and Irrigation Boards shall be decided by arbitration (ss. 10-11).

Fibre and Sponges.—Act 981 of 1909 provides for the granting of licences for raising and recovering within the territorial waters of the State of the fibre known as *Posidonia australis* and sponges (s. 4) within areas not exceeding five square miles (s. 5) upon application to the Land Board (s. 6), for terms not exceeding twenty-one years (s. 7 (1)) at an annual rental of £5 per square mile (s. 7 (3)), and subject to the continuous employment of two men or more, according to the area (s. 7 (4)), and the payment of a royalty ranging from 2½ per cent. of the net profits where they exceed 5 per cent. to 20 per cent. of the net profits where they exceed 100 per cent. (s. 7 (5) and schedule). Transfers and sub-licences may only be made with the consent of the Commissioner of Crown Lands (s. 8). Licences are to confer exclusive right to remove and appropriate fibre and sponges (s. 9). Regulations may be made for carrying out the Act and for prescribing close seasons for sponges (s. 11).

Mining.—*On Private Property.*—Act 992 of 1909 consolidates and amends the law upon this subject. The Act enables a right to mine on private land to be acquired by resumption of the land, or its proclamation as an alluvial field, or by compulsory mining lease (s. 7), but does not extend to gardens or orchards, or land within 200 yards of buildings or water reservoirs, nor to land occupied for charitable purposes or by local authorities for parks (s. 5). Part II. provides for the resumption by the Crown of the ownership of private land reasonably supposed to contain payable reef metal which the owner, after notice, fails to work (s. 8), provisionally, in the first instance, for six months, during which the land may be dealt with by licensees for mining purposes (s. 13), and afterwards absolutely (s. 9), compensation being paid as on compulsory purchase under the Land Clauses Consolidation Act (s. 10), exclusive, however, of the metals (s. 11), the previous owner being entitled to the royalties reserved, less a commission of 2½ per cent. to be retained by the Government (s. 17). Part III. provides that lands reasonably supposed to

[1] The legislation of the year 1909, being that of the third session of the nineteenth Parliament, is here reviewed.

[2] See Journal, N.S. vol. x. p. 348.

[3] See Journal, N.S. vol. x. p. 348.

contain payable alluvial metal may, in the absence of working, after notice, be proclaimed as an alluvial field, and dealt with under the laws relating to alluvial mining on Crown lands on payment of rent by special licensees (s. 18), the owner being entitled to the rents and fees less a commission (s. 19), and further to insist upon the absolute resumption of the land (s. 22), the prior owner to have the first right to purchase resumed land which may be no longer required for mining purposes. Part IV. contains provisions enabling a person desirous of obtaining a lease or claim on private land to enter thereon under the authority of the Minister or a Warden for the purpose of pegging out the land he may desire (s. 25), but not for the purpose of mining, unless or until compensation has been paid or agreed (s. 26). Part V. provides for compulsory mining leases for gold not exceeding 20 acres, and of minerals not exceeding 40 acres in area (ss. 29-30), after notice, and failure on the part of the owner to work, to be granted either by the owner by agreement or, on failure of agreement, by the Minister, at a rent to be assessed by the local Court nearest the land, subject to royalties and conditions specified in the Act (ss. 32-3), which leases may be cancelled for non-compliance with the specified working conditions (s. 35).

Fisheries.—Act 977 of 1909 amends the principal Act, 864 of 1904,[1] and repeals the amending Act 901 of 1905.[2] The duties of inspectors are re-defined (s. 5), and their powers added to (s. 6). The list of offences is extended (ss. 8-9). Fishermen's licences are restricted to natural-born or naturalised British subjects (s. 13), and their fishing-boats are to be registered (s. 16).

Libraries and Museums.—*The Public Library, Museum and Art Gallery, and Institutes.*—Act 986 of 1909 consolidates and amends the law governing these institutions. Part II. continues the Board of Governors under Act 296 of 1883-4 (s. 6), but reduces the number of members to fourteen, of whom five are to be appointed by the Governor, and the remainder elected, two by the University of Adelaide, one by the South Australian Society of Arts, one by the Royal Society of South Australia, one by the South Australian Branch of the Royal Geographical Society of Australasia, and three by the Institutes Association of South Australia (s. 7), and provides the machinery for the conduct of elections (s. 10), and for the filling of vacancies (ss. 13-14). The Board has the care and control of the lands and buildings, and has vested in it the personal property of the institutions (ss. 19-20), power to appoint officers (s. 21), receive and apply moneys (s. 22), and to make regulations for the conduct of the institutions, and generally for the purposes of the Act (s. 26). Part III. continues the Adelaide Circulating Library (s. 31) under the management of a committee elected by the subscribers (s. 36). Part IV. provides for the constitution, property, and government of urban, suburban, and country institutes (Div. I.), the mortgaging, subject to the consent of the Minister, of institute property to raise funds for building or permanent

[1] See *Legislation of the Empire*, vol. ii. p. 38.
[2] See Journal, N.S. vol. vii. p. 145.

additions (Div. II.), the sale of institute property, subject to certain consents, freed from trusts (Div. III.), the dissolution of institutes (Div. IV.), the sale of institutes to the Local Government authorities to be carried on by them under the management of a committee elected by subscribers (Div. V.), the transfer of institutes to Local Government authorities under the Free Libraries Act, 1898 [1] (Div. VI.), and the amalgamation of institutes (Div. VII.). Part V. incorporates the Institutes Association of South Australia (Div. I.), which is to meet annually, the constituent institutes being represented by from one to three delegates, according to their membership (Div. II.), its affairs being managed by a council of twelve, of whom seven are elected by the Association and five appointed by the Governor, the chief functions of which are to offer advice to institutes, to circulate amongst institutes boxes of books, pictures, etc., and to allocate amongst them such moneys as may be voted by Parliament for such purposes (Div. III.).

State Children.—Act 996 of 1909 amends the principal Act, 641 of 1895, in the direction of facilitating the Council in prosecuting offences against (s. 10) and enforcing orders made under the Act (s. 8), prohibiting the hearing of informations against children at ordinary Courts (s. 3), and substituting, in the case of children, the control of the Council for imprisonment (s. 11). Affiliation cases are to be heard *in camera* (s. 12), and the defendant is a compellable witness (s. 13), the homes of illegitimate children under seven years of age are liable to inspection (s. 18), neglected or incorrigible children may be placed under the control of the Council until eighteen years of age without being placed in an institution (s. 21), and shall be deemed "State children" (s. 22). For parents, whether out of the State or not, to fail to provide proper maintenance for children, whether legitimate or illegitimate, is made an offence punishable by fine or imprisonment (s. 27). In affiliation proceedings, males, other than the defendant, who admit upon oath sexual intercourse with the mother within specified limits of time may be ordered to contribute to maintenance and confinement expenses (s. 28). In affiliation proceedings, corroboration of the mother's evidence is not to be necessary unless denied by the defendant upon oath (s. 29). Corporal punishment may be inflicted upon State children placed out only in accordance with regulations in the presence of an adult witness, and must be reported to the Council (s. 30).

Public Health.—Act 991 of 1909 amends the Health Act, 1898.[2] It allows sanitary rates to be levied in respect of parts of a Local Government area (s. 3), and sanitary expenses to be defrayed out of the general revenue of the local authority (s. 4). Medical practitioners are to be paid a fee of 2*s.* for each report notifying an infectious disease (s. 5).

Trade Regulations.—*Inflammable Oils.*—Act 987 of 1909 amends the provisions of the principal Act, 958 of 1908,[3] in respect of the conditions and

[1] See *Legislation of the Empire*, vol. ii. p. 4.
[2] *Ibid.* vol. ii. p. 2.
[3] See Journal, N.S. vol. x. p. 351.

rules relating to licensed stores and the giving of notices before shipment of oils.

Local Government.—*Municipal Corporations.*—Act 978 of 1909 adds wood blocking or asphalting of streets to the list of permanent works specified in Act 833 of 1903 (s. 14),[1] the cost of which may be borrowed on security of the rates.

Animals.—*Prevention of Cruelty.*—Act 997 of 1909 extends the Act 956 of 1908,[2] by making the master liable in cases where the offence is committed by the servant after notice to the master.

5. TASMANIA.

[*Contributed by* B. C. Ferrers, Esq.]

Acts passed—63.

Potato Diseases.—Act No. 5 contains stringent regulations for the eradication of diseases affecting the potato. The Governor is empowered to prohibit the removal of potatoes from or to any specified place in the State, and to declare any parcel of land or any building a quarantine for the reception of diseased potatoes (s. 4). The Minister administering the Act may declare any district to be infested and make any regulations necessary for the prevention of the disease (ss. 9, 10).

S. 11 imposes upon an occupier of potato land an annual rate of from 1*s.* to 2*s.* per acre.

No. 49, an amending Act, empowers the Governor to exempt any area from the provisions of the principal Act.

Land Valuation.—An important enactment (No. 7) contains many of the provisions of the New Zealand Act of 1900.[3]

Part I. deals with definitions. "Capital value" of land is interpreted as the sum which the fee simple of the land might be expected to realise at the time of the valuation, if offered for sale on reasonable terms (s. 2).

Part II. provides for the administration of the Act. By s. 5 the Commissioner of Taxes is appointed Chief Valuer under the Act, the Governor being empowered by s. 6 to appoint district valuers and other officers.

Part III.—Land Valuation Rolls.—A valuation roll of the land in each district is to be prepared, stating, *inter alia*, the description, situation, name, and residence of owner and occupier, and the area and capital value of each separate property (s. 11 (1)).

Ss. 14 and 15 provide for the revision by the Chief Valuer of the district valuation rolls. Any person may require the Chief Valuer to make a fresh

[1] See *Legislation of the Empire*, vol. ii. p. 32.
[2] See Journal, N.S. vol. x. p. 351.
[3] No. 17 of 1900. See *Legislation of the Empire*, vol. ii. p. 232.

valuation of his property (s. 17). Notice of the valuation roll is to be published and facilities are given to owners to raise objections (ss. 18-20).

The Chief Valuer has power to allow objections (s. 23); all objections not so allowed are to be determined by a court of review (s. 25), which is to have all the powers conferred by the Local Courts Act, 1896.

The decision of a court of review is final except on points of law, when appeal, in the form of a special case to be agreed on by the parties, lies to the Supreme Court (ss. 27, 34, 35). The order of the Supreme Court is final (s. 38).

The powers of officers acting under this statute are determined in Part V., which follows the provisions of the Act of 1900.[1]

Death Duties.—The definitions of the terms "property" and "property passing on the death" given in the English Finance Act, 1894, are followed in s. 2 of Act No. 8.

Where death duty is payable in the United Kingdom in respect of property situated there, a sum equal to the amount paid is to be deducted from the duty payable in Tasmania in respect of the same property (s. 3).

Taxation.—The Acts of 1904[2] and 1906[3] are amended by No. 10. Under s. 3, where the income of a taxpayer consists of salary or wages, the amount of tax payable by him shall be based on the amount of such income and not upon the value of property or of board and lodging.

The employer of any taxpayer who is in default with payment of taxes may be declared an agent for his employee and compelled to deduct from salary or wages sufficient to meet the liability (s. 8).

Land Tax.—The Land Tax Act, 1905,[4] is amended by Act No. 18 and the amount of the graduated land tax payable under that statute is increased by one-fourth the original amount (s. 2).

Income Tax.—No. 19 amends the Act of 1902[5] with special reference to mining companies.

Summary Jurisdiction (Married Persons).—In 1896 Western Australia and New Zealand, following the English Act of 1895,[6] conferred on magistrates summary jurisdiction in reference to married persons. Tasmania has now adopted the same course, and since the passing of Act No. 26 a married woman may apply to a police magistrate or two justices of the peace for a separation order on any of the following grounds: (i) where the husband has been convicted of an assault upon her; (ii) desertion by the husband; (iii) persistent cruelty or wilful neglect; (iv) where the husband is an "habitual drunkard"; (v) adultery on the part of the husband. It will be noticed that the Act confers on married women greater powers than those given by the

[1] No. 4 of 1900. [2] No. 17 of 1904. See *Legislation of the Empire*, vol. ii. p. 73.
[3] No. 32 of 1906. [4] No. 4 of 1905. See *Legislation of the Empire*, vol. ii. p. 76.
[5] No. 29 of 1902. See *Legislation of the Empire*, vol. ii. p. 68.
[6] 58 & 59 Vict. c. 39.

English statute. In Tasmania a married woman may obtain a separation order on the ground of a husband's adultery, whereas in England only such adultery as amounts to desertion entitles a married woman to obtain such relief in a Court of summary jurisdiction. Moreover, s. 11 of the Tasmanian statute enacts that all the provisions of the Act shall apply so as to entitle a married *man* to the benefit thereof.

Bills of Exchange.—The principal Act of 1884 is amended by Act No. 31. Where a bank pays a customer's cheque which has been fraudulently altered owing to the gross negligence of the drawer, s. 2 relieves the bank of any responsibility with regard to the paying of the cheque.

Coroners.—No. 33 amends the law concerning coroners. Inquests are to be held before a coroner sitting alone unless (i) the coroner considers it desirable to have a jury; (ii) a relative or friend of the deceased makes a request in writing for a jury; (iii) the Attorney-General or Solicitor-General directs that the inquest shall be held before a coroner and a jury (s. 3).

A coroner sitting alone is to have all the powers formerly conferred on a coroner and a jury (s. 4.).

The Act directs that seven jurors be summoned instead of twelve.

S. 10 declares an inquest to be necessary in three cases: (*a*) where there is reasonable cause to suspect that the deceased has died a violent or unnatural death; or (*b*) a sudden death from some cause unknown; or (*c*) where the deceased has died in prison or under such circumstances as to require an inquest in pursuance of any Act.

S. 11 empowers a coroner to order the payment of expenses of witnesses.

Influx of Criminals Prevention.—Act No. 34 follows the lines of legislation in New South Wales in 1903,[1] and Queensland in 1905,[2] and prohibits persons convicted of certain offences in any place beyond the limits of Tasmania from coming into the State before the lapse of three years after the termination of any imprisonment suffered by them.

Land Surveyors.—No. 45, a comprehensive enactment, provides for the registration, control, and practice of land surveyors. A Surveyors' Board, consisting of seven surveyors, is appointed for the execution of the Act.

Landlord and Tenant.—No. 47 amends the Act of 1874, and gives to under-tenants and lodgers the protection afforded to lodgers in the United Kingdom by the Lodgers' Goods Protection Act, 1871.

Where a superior landlord levies distress on the goods of an under-tenant or lodger for arrears of rent due from the immediate tenant, the under-tenant or lodger may make a declaration that the immediate tenant has no property in the goods distrained. If the owner of the goods undertakes

[1] No. 6 of 1903. See *Legislation of the Empire*, vol. i. p. 474.
[2] No. 24 of 1905. See *Legislation of the Empire*, vol. i. p. 533.

to pay his rent to the superior landlord, the latter is then prohibited by the Act from proceeding with the distraint (ss. 5, 6). Any possible abuse of the protection thus afforded to sub-lessees and lodgers is prevented by s. 8, which excludes from this provision (i) goods belonging to the husband or wife of the tenant whose rent is in arrear; (ii) goods comprised in any bill of sale made by such tenant; (iii) goods in the possession of such tenant by the consent of the true owner, under such circumstances that the tenant is the reputed owner thereof.

Sewing-machines, knitting-machines, type-writing machines, and mangles are exempt from distress in certain cases (s. 10).

Gold.—The operation of the Gold Act, 1908,[1] was suspended by Act No. 3 and then repealed by No. 48, which came into operation in April 1910, and regulates the buying of gold. Most of the more important provisions of the Act of 1908 are embodied in the new statute. The chief alteration made in the law is that the Minister for Mines is constituted the licensing authority for the purposes of the Act. Formerly the licensing of gold-buyers was dealt with at petty sessions.

Contagious Diseases (Cattle).—The Acts of 1900[2] and 1903[3] are repealed and the Act of 1861 is amended by Act No. 50.

S. 6 provides that cattle shall not be imported into Tasmania unless they are bred from herds that have been immune from disease for three years prior to the shipment of the cattle.

Supreme Court (No. 62).—A judge having advised upon or being interested in any matter before the Court, may retire from the bench; in such cases the remaining judge or judges shall be deemed to constitute the full Court.

Supplementary List.

The following are Acts of a formal nature:

Supply (No. 1), *Appropriation* (No. 4), *Supply* (No. 9), *Public Health Amendment* (No. 28), *Appropriation* (No. 35), *Supplementary Appropriation* (No. 36), *Treasury Bills* (No. 58), *Inscription Stock and Treasury Bills* (No. 59), *Inscription Stock and Treasury Bills* (No. 60), *Inscription Stock and Treasury Bills* (No. 61).

6. VICTORIA.[4]

[*Contributed by* C. J. Zichy-Woinarski *and* W. Harrison Moore, Esqrs.]

Acts passed (second Session)—55.

An unusually large proportion of the public Acts passed in this session are of a character which is rather local or private.

[1] See Journal, N.S. vol. x. p. 340. [2] 64 Vict. No. 32. [3] 3 Ed. VII. No. 9.

[4] The Legislation of the first Session of 1909 was reviewed in the Journal, N.S. vol. x. p. 346.

Land.—The Lands Act, 1909 (No. 2228), is a short measure and is largely an Act affecting the administration of the earlier Lands Acts. The Lands Department is empowered by it, for special cause to be shown by an applicant, to postpone the payment of rent or licence-fees for a period of three years in Wallee County or for a period of five years in other parts of the State. This is to enable the applicant holder of such land to put his financial strength into the improvement of his land, and the applicant, in addition to the fencing and other improvements required under his licence or conditional purchase lease, must, to entitle himself to receive this indulgence, agree to effect to the satisfaction of the Department certain specified improvements upon the land (s. 2). The Act also empowers the Minister, upon application made by a selector of land who has become such since the year 1903 and who does not occupy a holding under the Closer Settlement Acts and who makes his application within twelve months of the passing of the Act, to appoint a Board of review to revalue any such land, and if the Board is of opinion that the existing value already set upon the land is too high, it may certify that fact to the Minister and also fix what in its opinion the value should be, and the Governor in Council may thereafter accept a surrender of the existing licence or lease and may issue to the selector a new licence or lease at the reduced value fixed by the Board so appointed (s. 4).

It had been the practice of the Lands Department to allow persons over the age of eighteen years of age and under twenty-four years of age to select land under the Lands Acts. This practice finds ratification in s. 3, and the section also makes it lawful for the future for any person over the age of eighteen years of age to select land under any of the Lands Acts in force. S. 5 deals with the re-transfer of leases or licences upon insolvency or death. At present trustees in insolvency and executors and administrators are limited to twelve months from the date of probate or administration being granted within which to transfer the lease or licence of a deceased holder, and this limit of time had been found to work harshly from time to time, and this section therefore extinguishes any limit of time in the case of re-transfers by executors or administrators. Minor amendments in the Lands Act, 1904, and the Wallee Leases Act, 1907, complete this Act.

Closer Settlement (No. 2229).—This Act is the latest of the long series of statutes dealing with this subject, and is to be read with the Closer Settlement Act, 1904, and succeeding Acts, save that it repeals most of the Small Improved Holdings Act, 1906.[1] The whole of the provisions of the principal Act relating to compulsory acquisition are repealed and superseded by the scheme of the present Act. This, however, does not involve any alteration of principle, and particularly leaves the necessity for the concurrence of both Houses of Parliament in the exercise of this power. There are elaborate and precise provisions concerning the

[1] See *Legislation of the Empire*, vol. ii. p. 146.

basis of compensation (s. 28 (2): the value of the land is to be assessed without reference to any increase in value arising from the proposal to carry out the purposes of closer settlement); the tribunal and procedure for determining compensation (ss. 34 and 35: the tribunal is a judge of the Supreme Court without a jury or assessors); the mode of payment, and the adjustment of the interest of leaseholders, mortgagees, and other encumbrancers. In pursuance of the policy of conserving the interests of the State in areas suitable for irrigation, it is provided that lands suitable for closer settlement in Irrigation Districts may, on the recommendation of the Rivers and Water Supply Commission, be acquired, even though there is for the time being no actual demand for land for such purposes (s. 13). By ss. 81 and 82 the Closer Settlement Board has power to suspend payment of a tenant's instalments under a conditional purchase-lease for a term of five years, on condition of the tenant making such additional improvements as may be agreed—the concession may be based either on the ground that the applicant for some special cause is not likely to be able to pay the instalments (s. 81) or that the land is not likely to be immediately remunerative (s. 82). Part IV. of the Act deals with advances to settlers, a matter now committed to the administration of the Board; such advances shall not in any year exceed £200,000 (see also s. 9). Perhaps the most important feature of the Act is its augmentation of the status and powers of the Lands Purchase and Management Board established by the principal Act. Under that Act the members of the Board were to be paid by fees, which were not in the case of any member to exceed £300 per annum. Now, a permanent Chairman is to be appointed with a salary of £1,000 a year, and the other two members of the Board receive a salary of £700. To the Board is committed the administration of the laws relating to closer settlement. The scheme generally aims at a more skilled, consistent, and flexible management than in the past, and also in view of the discretionary character of many of the powers conferred, at the removal of administration from direct political influence. The members of the Board have a tenure not exceeding four years.

Water (No. 2226).—This Act amends and is to be read in conjunction with the Water Act, 1905.[1] The Act deals in the main with administrative machinery without introducing any new substantive provision of importance, and transfers to the Water Commission established by the principal Act many functions relating to water conservation and supply and national works in connection therewith hitherto performed by the Department of Water Supply or the Board of Land and Works. The salaries of the Commissioners are raised, in the case of the chairman, from a maximum of £1,200 to £2,000, and in the case of the other Commissioners from £800 to £1,000. The Commissioners are required to raise an amount of 2 per cent. per annum on the cost of all works constructed in any district

[1] See *Legislation of the Empire*, vol. ii. p. 139.

for the purpose of a redemption fund (s. 19), and in the case of works of a perishable or deteriorating character the Commissioners must raise a further 5 per cent. for a depreciation fund (s. 20).

Sheep Dipping (No. 2216).—This Act requires every owner of sheep to dip his sheep immediately after shearing, unless he has obtained a "clean certificate" that all his sheep and lambs are free from ticks and lice. There are various other provisions in the Act designed to prevent the spread of ticks and lice.

Distress.—The Landlord and Tenant Act, 1909 (No. 2211), is almost a reprint of the Imperial Act,[1] which restricts the right of distress of a landlord to distress upon the goods of his own tenant. Previously protection had been given by statute law to lodgers who were entitled—upon supplying an inventory of their goods and upon making a declaration to ownership and upon setting forth what rent or board money was owing and paying it to the superior landlord—to recover their goods whenever seized for distress by the superior landlord. The Victorian Act enlarges this protection to cover the cases of strangers and of under-tenants whose goods may have been seized, but it is wider in its terms than the Imperial Act in being made applicable to *all* under-tenants, and not to under-tenants only whose rent is payable at terms of not less than three months. In other words s. 5 of the Imperial Act is not enacted in Victoria. The Victorian Act, too, gives protection to goods in the reputed ownership of a tenant. It also enlarges the time to replevy goods from five to fifteen days upon security being given and a written request made for the extension.

Settled Estates and Settled Land.—Necessarily the Settled Estates and Settled Land Act, 1909 (No. 2235), is a highly technical Act, and a short notice only is attempted and without details. In the main it brings the law on this subject in Victoria into line with the present English statutes. It takes the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), as amended by 44 & 45 Vict. c. 41, ss. 41 and 70, and 57 & 58 Vict. c. 56, as the basis of the present settled estate law in England, and omitting some provisions as inapplicable to Victoria and modifying others to make them fit in with existing law and procedure in Victoria, it embodies it as Part I. of the two Parts of this Act. For practical purposes Part I. will not be of such value as Part II., because Part I. "does not confer, or enable the Court to confer, on a limited owner powers beyond those ordinarily inserted in any well-drawn settlement." "The Court" in the Act means the Supreme Court only and does not include the County Court. In applications to the Court under Part I. which require to be made with the consent of the persons in existence having any beneficial estate or interest under the settlement it is provided that "where two or more of such persons can in the opinion of the judge be grouped into classes having similar or substantially similar interests so far as the objects

[1] 8 Ed. VII. c. 53.

or results of the application are concerned, the judge may at the request of the applicant for the sake of economy or despatch permit or direct all the beneficiaries in any such class to be represented at the hearing of the application and of any order made therein, by one and the same representative nominated and approved by the judge" (s. 21). The Court may also dispense with notice or consent where a person interested cannot be found or it is uncertain if he is living or dead (s. 24).

The Court's power to grant leases under Part I. is in the case of building leases shortened to a term not exceeding fifty years.

Part II. of the Act is based on the Settled Lands Act, 1882, as amended by 47 & 48 Vict. c. 18, 50 & 51 Vict. c. 30, 52 & 53 Vict. c. 36, 53 & 54 Vict. c. 69, and 61 & 62 Vict. c. 22, and all these Acts aimed at giving the tenant for life a practically absolute control over the disposition of settled land. Part II. of this Act is not only based on the foregoing English statutory law, but it adopts the amendments proposed in the English Bill of 1907, with an important local amendment which is this: whereas under the English statutes a tenant for life can of his own motion and practically at his absolute discretion sell, exchange, partition, mortgage, or charge the corpus of the settled estate, without the consent or approval of the trustees or those entitled in remainder, Part II. of this Act, whilst it confers on him the same powers, requires him before exercising them to obtain either the consent of the trustees or the order of the Court. It is conceived that in most cases the trustees would give their consent, and it is provided that such consent is not to be arbitrarily withheld and that a tenant for life who is dissatisfied with the consent being withheld may apply to the judge in chambers for an order authorising him to do the particular act in question without such consent (s. 110). In other respects the suggestions of the English Bill of 1907 are adopted as being of unquestionable utility for supplying certain wants and as curing certain defects and ambiguities in the law which were discovered from time to time in cases before the English Courts or by legal practitioners.

Coal-Mines.—The Coal-Mines Regulation Act, 1909 (No. 2240), prohibits the employment underground of boys and also their employment in caging or uncaging trucks or skips on cages or as landers or as bracemen, and it prohibits altogether the employment of boys under fourteen years of age and of females (s. 6). No person with certain exceptions (as *e.g.* a manager, a chief engineer or electrician, etc.) may be employed more than eight hours a day or forty-eight hours a week, and in the case of underground miners the time is to be reckoned from when the miner commences to descend the mine until he returns to the surface (ss. 7 and 8).

Wages must be in cash and may not be paid in any public-house or place adjacent. Each skip is to be weighed and all the coal paid for, but owners may in writing agree with the miners as to deductions for stones and other substances from the weight of the output, and the

"average weight" system may be accepted. The miners may appoint check weighers to act for them at the weighing machines and to see that they get fair play, and the machines are to be tested at regular intervals by an inspector under the Weights and Measures Act, 1890 (ss. 12-17).

Mine-owners are compelled, except in certain specified cases where a single shaft or tunnel may be sufficient, to provide two properly appointed and equipped shaft tunnels or outlets in communication with every seam for the time being at work and which will afford separate ingress and egress to the miners, and such shaft tunnels or outlets must not at any point be nearer to one another than 20 yards (ss. 18-21).

Every mine is to be under a manager responsible for the control, management, and direction of the mine, and no person is to be qualified to be a manager who is not the registered holder of a first-class certificate under the Act. Where, however, only twelve persons or less are employed underground it is made sufficient for the manager to hold a permit from the Board of Examiners. Daily personal supervision and daily underground inspection must be made by the manager or by an under-manager nominated in writing by the owner or the manager (ss. 23-4).

A number of sections deal with the constitution of a Board of Examiners for mining managers and their powers under the Act. A first-class certificate is required for the position of a manager and a second-class certificate for that of under-manager, and candidates for a first-class certificate require to have had five years' practical experience in mining and for a second-class certificate three years' such experience. Provision is added for the recognition in the State of Victoria of corresponding certificates granted in other States of the Commonwealth or in New Zealand, whenever a similar recognition is granted by such latter places to certificates granted in Victoria (ss. 25-33). The Act also endows the existing Board of Examiners for engine-drivers in connection with gold-mining operations in Victoria with a power to issue certificates to engine-drivers in coal mines (ss. 34-8).

The Act makes it essential that owners shall

(*a*) make half-yearly returns giving particulars as to (1) the name and situation of the mine; (2) the names and descriptions of the owner, manager, and under-manager; (3) the number of persons ordinarily employed therein; (4) the quantity of mineral gotten or wrought; and (5) the ventilation shafts, splits, and supply of fresh air;

(*b*) keep in the office of the mine an accurate plan and sections of the shafts, drives, levels, and all other underground workings, including the general direction and rate of dip of the strata, together with a section of the strata sunk through, or if that is not reasonably practicable, a statement of the depth of the shaft with a section of the seam; and supply annually a certified copy of such plant sections to the Secretary for Mines;

(*c*) give notice to the inspector of the district (1) where any working is commenced for the purpose of opening a new shaft or seam; (2) where a shaft or seam is abandoned or its working is discontinued; (3) where the working of a shaft or seam is recommenced after abandonment; (4) where any change in the name of a mine, or in that of the owner, manager, or legal manager occurs;

(*d*) fence securely every shaft and entrance from the surface of any mine that is abandoned or any working that is discontinued (ss. 39-43);

(*e*) give notice to the inspector of the district of any accident or explosion that may occur in or about any mine and causing loss of life or injury (s. 47);

(*f*) publish in legible characters in some conspicuous place at or near the mine an abstract of the Act and a copy of the special rules made under it (s. 60).

The Act provides for a Chief Mining Inspector and for inspectors, and gives to them all necessary powers to ascertain if the Act and the regulations are being complied with, and gives also power to order the manager of a mine at once to remedy anything dangerous or defective in the mine, subject only to appeal by the owner or manager to the Chief Inspector, whose decision is final (ss. 44-6).

It provides too for the Minister ordering a formal investigation by a person specially appointed by the Minister into the causes and circumstances of any explosion or accident and for such inquiry being held in open Court (ss. 48 and 49). And in any coroner's inquest on any death from any accident in a mine the inquest must be taken and made by jurors who are not to be persons having a personal interest in or employed in the mine or persons who during a period of twelve months have been discharged from the mine; further, the inspector for the district, the next-of-kin or executor of the person killed, and the mining manager of the mine are authorised to attend the inquest and to put questions to any witness (s. 50).

A large part of the Act is taken up with the tabulation of a number of general rules for health and safety. Most of these rules were already in operation in gold-mining and they are mainly based upon the Imperial Act (50 & 51 Vict. c. 58, s. 49) and the New South Wales Act of 1902, No. 73. In addition to these general rules set forth in the Act itself, there are to be for every miner special rules "for the conduct and guidance of the persons acting in the management of such mine or employed in or about the mine as under the particular state and circumstances of such mine may appear best calculated to prevent dangerous accidents and to provide for the safety, convenience, and proper discipline of the persons employed in or about the mine." These special rules require to be approved by the Minister. The Governor in Council may make special rules which shall

be the special rules for any mine in respect of which no special rules have been framed or shall be in force (ss. 51-61).

Some special features remain to be noticed. Up to the time of this Act no royalty has been charged by the Crown in Victoria on coal-mining, or, in fact, on any kind of minerals, although in the neighbouring State of New South Wales and in the Dominion of New Zealand the royalty system prevails. This Act provides for the payment of a royalty of not more than 1*s.* a ton on the output of all marketable coal raised under any lease for coal-mining granted or renewed. When the amount of the royalty exceeds the rent charged under the lease, the rent paid is to be deemed to be royalty (s. 62). Power too is taken to have Crown land bored for coal-mining, and then thrown open to application; and the lessee of such land has then to pay by way of a further rent so much of the cost of any work done on the land as in the opinion of the Governor in Council is reasonable, having regard to the benefit accrued or likely to accrue, and this further rent is not to be included in the royalty payable (s. 63).

Another special feature is the creation of the Victorian Coal Miners' Accident Relief Fund, so that the industry may practically provide for those who are injured in the mines. The fund is to be fed in this way: all employees at each mine are to contribute at the rate of $4\frac{1}{2}d.$ a week, owners are to contribute at the rate of one-half of the aggregate amount contributed by the employes, and the Government of Victoria is to subsidise the fund annually by a sum equal to that contributed by the owners. A committee at each mine is constituted called the Accident Committee; and these committees are to be responsible to the Victorian Coal Miners' Accident Relief Board for all receipts and disbursements at their respective mines, and the Board will have control over the whole fund. It is observable that in the State coal-mine the Government will pay as owners in addition to the subsidy.

The grant of allowances is made by the Accident Committee for any mine and in accordance with prescribed conditions and scale, and is in addition to any payment under the rules of any friendly or benefit society, and is not to affect the compensation payable by the owner of a mine in any action under the Employers' Liability Act (ss. 73-83).

The last and perhaps the most important special feature is Part II. of the Act establishing in Victoria State coal-mines. Hitherto the State of Victoria has been through the Commissioners of Railways an interested patron of the privately-owned coal-mines; now, as being so very large a customer for coal, it proposes itself to mine for coal, and open and establish coal-mines. Such coal-mines are to be vested in the Railway Commissioners, and full powers are conferred for carrying on coal-mining and for selling the slack coal, and all moneys receivable are payable into the public account, and out of the net surplus profits a sinking fund and depreciation fund are to be established in respect of the capital expended (ss. 84-99).

Marriage (No. 2192).—This Act requires that the head of every religious denomination in Victoria shall annually furnish to the Government Statist a full and complete list of ministers for the celebration of marriage who "are exercising the functions of officiating ministers of such denomination and have not been degraded or deprived of their authority by their superior or the recognised church court or tribunal of the denomination"; ministers whose names do not appear in the lists furnished are forthwith to be removed from the register of persons authorised to celebrate marriages (s. 5). Ministers who, in the opinion of the Chief Secretary, are making a business of celebrating marriages for gain, irrespective of carrying on the ordinary duties of a minister, may be prohibited from celebrating marriages (s. 4). No minister may celebrate a marriage except after three days' written notice, but in cases of emergency a justice of the peace may dispense with this notice (s. 2); and the sanction for breach of this provision and of provisions of prior Acts relating to hours of celebration is not the nullity of the marriage, but punishment of the person celebrating it (s. 3). S. 6 declares that "nothing in this Act except s. 5 shall extend to any marriage in the religious Society of Friends commonly called Quakers, or of Jews, but every such marriage shall be as legal and valid as if duly solemnised under the provisions of the Marriage Acts if such marriage was, when celebrated, a valid marriage according to the usages of the Quakers or the Jews, as the case may be." This rather curious provision must plainly be limited to the *forms* of marriage and its formal validity.

Infants' Relief (No. 2227).—This Act introduces into Victoria the provisions of 37 & 38 Vict. c. 62, avoiding infants' contracts and prohibiting ratification, and 55 Vict. c. 4, s. 5, as to contracts of loan made during infancy. It also repeals s. 215 of the Instruments Act, 1890, which had declared that no action should be brought on any promise or ratification after full age in respect of any debt incurred during infancy, unless such promise or ratification was in writing.

Old Age Pensions (No. 2209).—In contemplation of the assumption of the burden of old age pensions by the Commonwealth, this Act provides for the release of all property of pensioners which had under the Victorian Acts become vested in Victorian authorities.

Probate Duties.—The Administration and Probate Duties Act, 1909 (No. 2214), merely continues for a further period of twelve months (December 31, 1909—January 1, 1911) the present rates of probate duty chargeable on real and personal property in Victoria of deceased persons.

Motor-Cars (No. 2237).—This Act—the first on the subject in Victoria—requires all cars to be registered and numbered and fixes a uniform fee of £1 for cars and 2*s.* 6*d.* for cycles. Drivers are to be licensed annually and no person under the age of eighteen may receive a licence; and on conviction for any offence under the Act (other than a first or second conviction for exceeding any speed limit) the licence may be suspended or endorsed,

and the Court may disqualify the offender for receiving a renewal of licence for such time as it thinks fit, subject to an appeal to the Court of General Sessions (s. 8). A Victorian pass available for one week may be obtained in lieu of a licence in the case of cars coming into Victoria from other States (s. 9). Reckless driving is the subject of s. 10, whereby "if any person drives a motor-car on a public highway recklessly or negligently or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the highway and to the amount of traffic which actually is at the time or which might reasonably be expected to be on the highway," he is guilty of an offence, and where an accident has occurred as a result of such driving he shall have his licence cancelled and may be disqualified. Persons who refuse their name and address or whose cars are not numbered may be arrested; and owners of cars are required, under penalty, to assist in the discovery of the person driving in contravention of the section. It is also an offence for a driver to refuse to stop when called on by any member of the police force. Excessive noise, smoke, or smell is prohibited by s. 11, and owner and driver are both liable in such a case. S. 12 requires a lamp to be carried in front of the car, and a rear lamp to show the number; and s. 13 requires a bell or horn to be carried. Where an accident occurs owing to the presence of a car, the car driver is required to stop and render such assistance as may be necessary, and to give his name and address as well as that of the owner of the car on demand (s. 14). The provisions of the Act may be supplemented in important particulars by regulations issued by the Governor in Council, *e.g.* identification, the mechanism of cars, and means for minimising noise and smell, traffic on Sundays near places of worship during progress of service, speed limits in specified localities, the notification of dangerous places by municipal councils. Any such regulation may be general or local and shall supersede any regulation or by-law made on the same matter by any municipality. The use of cars or particular kinds of cars may be prohibited on particular roads. Revenue arising under the Act from fees or penalties is paid as to one-half into the Consolidated Revenue and as to the other half into a Trust Fund called the Municipal Motor Fees and Fines Trust Fund, for distribution among the municipal councils as the Chief Secretary directs (s. 21). Nothing in the Act is to affect any liability civil or criminal of drivers or owners at common law or under any statute (s. 23). The Act is made applicable to persons in the public service of the Crown as well as to other persons (s. 24).

Railway Funds (No. 2207).—In 1907 an Act (No. 2133) provided that the surplus railway revenue for any year should be divided into two parts and paid into two permanent funds then established, called the Railway Interest Reserve Fund and the Railway Additions and Improvements Fund, and that this should continue until the funds amounted to £300,000 and

£200,000 respectively. The first fund was to be available for paying interest on Railway Loan Funds to the extent to which the net railway revenue for any year should be insufficient; the second fund was to be available for such expenditure as Parliament might from time to time authorise for additions and improvements on existing railways, and for equipment and rolling stock. The present Act declares that the surplus railway revenue for any year shall on the certificate of the Auditor-General be available to meet any deficiency in general revenue for that year, but the Government is to pay interest at 3½ per cent. to the funds in question until the amount so taken is restored. Where the general revenue is in excess of expenditure, recoupments to the railway funds shall be made until they reach the maximum provided for by the Act of 1907.

Companies.—The Companies' Names Act, 1909 (No. 2203), was passed in response to a request for legislation on the subject made by the Imperial authorities, and seeks to restrict the use by a company of any title which may be inclined to mislead the public into a belief as to Royal patronage of the company. An earlier Act on the subject was the Companies' Names Act, 1908,[1] restricting the use in a company's name of the words "Empire" or "Imperial." This present Act goes further and prohibits, without the previous consent of the Governor in Council, the use in a company's name of the words "Royal," "King," "Queen," or "Crown." The Governor in Council is not to give such consent if in its opinion the use of such word by a company would imply or be likely to convey the impression that the company is wholly or partly authorised or supported by or connected with His Majesty's Government in England or Victoria or any part of His Majesty's Dominions.

Poisons.—The Poisons Act, 1909 (No. 2206), is to exempt from the present stringent provisions of the law as to the sale of poisons certain preparations which are used in Victoria for sheep dips or for agricultural or horticultural purposes. To become exempt the preparation must be contained in a closed vessel or packet distinctly labelled with the word "Poison" in clear type and with the name and address of the seller and with a notice of the special purpose for which it is intended. The Governor in Council is given power to prescribe the conditions for the sale of any such preparations.

7. WESTERN AUSTRALIA.

Acts passed—58.

No distinction is made between the Acts which are "Public General" and "Local and Personal." Nos. 1, 9, 15, 22, 28, 35, 38, 45, and 48 would probably be placed in the latter class in the United Kingdom, in addition to a consolidating Act (No. 43) in relation to the metropolitan water supply.

[1] See Journal, N.S. vol. x. p. 344.

Nos. 2, 3, 6, 41, and 42 are Acts authorising the construction of various railways by the Government. Nos. 7, 8, 11, 27, 33, and 56 deal with land reserves. Nos. 14, 16, 18, 20, 23, 30, 53, and 58 are Finance Acts of the usual character.

Liquor Licensing.—No. 5 has for its object to strengthen the law by an amendment of the Wines, Beer and Spirit Act, 1880, and to secure as far as possible that the liquor consumed shall be Australian.

Vermin.—The Vermin Boards Act (No. 10) is merely an extension of the Act of 1902[1] to get rid of the rabbit pest. "Vermin" means rabbits and wild dogs and any other animal which the Governor may declare to be vermin. The Act constitutes a Board with the usual powers to do their best to destroy the vermin.

Fire Brigades.—The Fire Brigades Act, 1898,[2] applied to the municipal district of the municipality of Perth and any other municipality to which it might be extended. The present Act divides the State into two districts—the South-West and the Central—and allows the municipalities which adopted the previous Act to apply to be included within the provisions of the District Fire Brigades Act (No. 51). Special provision is made for its adoption by the city of Perth. The Act is largely based upon the Victorian Act No. 1200 of 1890, and corresponds in its main features with the Act of 1898.

Limited Partnership.—Act No. 17 is in the terms of the English Act of 1907[3] to establish limited partnerships.

Workmen's Compensation.—The Workers' Compensation Act (No. 21) amends the principal Act of 1902 by defining the basis of compensation for casual workers and making provisions for disagreement between the medical practitioners on either side by allowing them to nominate a third or, in default, an appointment to be made by the Court.

Land Surveyors.—The Act of 1895 regulated the licensing of surveyors, and extended provisions are made by the Licensed Surveyors Act (No. 25) for their registration and the control of their practice under the auspices of a Board. The Act introduces provisions of the Queensland Act of 1908[4] into the Act of 1895.

Carriage of Goods by Sea.—The Sea-Carriage of Goods Act (No. 26) applies to the carriage of goods by sea within the State the provisions of the Commonwealth Act of 1904.

Abattoirs.—The Abattoirs Act (No. 31) provides for the establishment of public abattoirs upon the lines of the Queensland Act of 1898.[5]

Education.—The Public Education Endowment Act (No. 32), is on

[1] No. 34. See *Legislation of the Empire*, vol. ii. p. 188.
[2] See *Legislation of the Empire*, vol. ii. p. 171.
[3] 7 Ed. VII. c. 24. See *Legislation of the Empire*, vol. i. p. 153.
[4] No. 3. See Journal, N.S. vol. x. p. 334.
[5] No. 23 of 1898: *Legislation of the Empire*, vol. i. p. 500.

the lines of the University Endowment Act, 1904,[1] but extends to all branches of education for the endowment to which funds and property may be held by a body of trustees.

Redemption of Annuities.—No. 34 is an Act for the redemption of annuities charged on or issuing out of land.

Legitimation per subsequens Matrimonium.—The State follows the law of other Australian States by allowing the legitimation of children born before marriage by the subsequent marriage of their parents by Act No. 44.

Agricultural Lands Purchase.—No. 46 repeals the earlier Acts on this subject passed in 1896, 1897, 1898, and 1904, and extends them in order to make better provision for the purchase of lands for immediate settlement and for facilitating settlement.

Roads.—No. 52 enables the Road Boards to render financial assistance to ferries, tramways, hospitals, and fire brigades. *Inter alia* they are permitted to subsidise "any resident medical officer" in the district.

Employment Broker.—The Employment Brokers Act, 1897, is repealed by Act No. 57, and extended provision made for their regulation. An employment broker is defined to mean "every person who follows, for reward, the calling of an agent for procuring engagements for persons seeking to be employed for reward, or for procuring employees for persons seeking to employ them for reward, but shall not apply to persons empowered by law to act in the engagement of seamen." The Act, therefore, corresponds to the English legislation for the licensing of registry offices.

8. PAPUA.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—33.

Finance.—Nos. I., II., III., VI., XVIII., XXI., XXII., XXIII., XXIV., XXXI., and XXXIII. are Appropriation and Supply Acts.

Reprinting Ordinances.—Ordinance No. IX. provides for the incorporation in Ordinances amended before or after June 1, 1909, of amendments, consisting in the repeal, omission, or insertion of certain words or figures, or the substitution of words or figures for omitted words or figures. The expression "words" includes part, division, heading, section, sub-section, paragraph, and schedule. The Government printer is to embody such amendments in all reprints of the Ordinance affected, and to make reference in the margin or by footnote to the amending Ordinance, and to print on every amended Ordinance when reprinted a short reference to every Ordinance whereby it has been amended.

[1] See *Legislation of the Empire*, vol. ii. p. 191.

Revenue.—Customs Ordinance No. IV. alters the customs duties on spirits and tobacco, and puts on the free list machinery, motors, cyanide of potassium, and cyanide of zinc.[1]

Ordinance No. XII. directs that customable goods taxed *ad valorem* are to be valued at their fair market value in the principal markets of the country of export (s. 1),[2] and allows owners of goods to appoint an authorised agent to comply on his behalf with the provisions of the customs laws. The agent must be exclusively in the employ of the owner, or be a duly licensed customs agent (s. 2). Provision is made for appointing places for the examination of goods on landing (s. 3).

Stamps.—Ordinance No. XX. imposes stamp duties on bills of exchange, to be denoted by adhesive stamps affixed and cancelled before issue by the maker or holder, and again on payment (ss. 5, 10). Provision is made as to the stamping of foreign bills payable in the territory (ss. 7, 8, 11).

Courts and Legal Procedure.—Ordinance No. XI. provides for the appointment (provisionally or on a particular emergency) by commission of the Governor under the seal of the territory of a deputy chief judicial officer to act during vacancy in the office of chief judicial officer, or his inability to act from illness, or when for any reason he should not preside at the trial of any case.

Ordinance No. XIV. fixes March 31 instead of the month of January for the publication of the jury list required by the Jury Ordinance of 1907.[3]

Ordinance No. X. provides for the permanent or temporary appointment of a Crown prosecutor to prosecute crimes and offences cognisable in the Central Court of the territory, and (if so requested by the Lieutenant-Governor or chief judicial officer) to conduct prosecutions before a magistrate (ss. 1, 3). All crimes cognisable in the Central Court are to be prosecuted by indictment in the name of the Crown prosecutor,[4] and the indictment may state the crime to have been committed in the territory of Papua without particularising the exact place where it was committed (s. 3).

Ordinance No. VIII. deals with criminal and civil appeals. The chief judicial officer must, on the application of counsel for the accused person tried in the Central Court on indictment for an indictable offence, and may in his discretion without such application, reserve any question of law arising on the trial for the consideration of the High Court of Australia. The case is stated by the chief judicial officer, and transmitted by him to the High Court (s. 1).[5] A conviction cannot be

[1] The Ordinance repeals the Customs Ordinances of 1897 and 1903.

[2] This section is to be brought into force by gazetted Proclamation.

[3] See Journal, N.S. vol. viii. p. 432.

[4] The form set out in the Queensland Criminal Code (adopted) is to be followed with the necessary variations.

[5] See Queensland Code, s. 668.

set aside for improper admission of evidence if the High Court is satisfied that the evidence was formal and not material, nor for improper admission of evidence adduced for the defence (s. 2). In all civil matters an appeal is given from the Central Court to the High Court of Australia (s. 3). The appeal is to be by case agreed by the parties, or if they disagree stated by the chief judicial officer. The parties may attach their legal arguments to the case, and need not attend personally or by counsel at the hearing of the appeal (s. 9).

Ordinance No. XXXII. provides for the fixing by the chief judicial officer of scales of fees payable to agents for conducting cases in the Central Court in its civil jurisdiction and in the Small Debts Court (s. 1). Till the scale is fixed, the fee is to be £3 in the Small Debts Courts, and varies according to the amount in dispute in the cases in the Central Court with a maximum of £10. No agreement to pay a higher fee is enforceable by action except by special leave of the chief judicial officer. The scale applies where no agreement is made; but an agreement may be made and enforced to pay fees below the scale.

Gold.—Ordinance No. XVIII. provides for the issue of licences to buy gold at a fee of £1. A like sum is payable on renewal. Unlicensed persons buying gold are liable to penalties.

Ordinance No XXIX. authorises the grant of a reward for the discovery of new goldfields. It is not payable unless the new field is more than 20 miles distant from the nearest place where payable gold had been previously obtained, nor unless for eighteen months out of the three years next following the discovery not less than 200 miners of European descent have been employed on the new goldfield. Provision is made for determining who is the first finder of the new field.

Timber.—Ordinance No. XXVIII. consolidates and amends former Ordinances relating to indigenous timber. It regulates:

(i) the purchase of timber rights from natives and the cutting of timber on native lands;

(ii) timber reserves and licences to cut timber thereon;

(iii) sandalwood and rubber.

Provision is made for regulations as to carrying out matters of detail and of penalties for breaches of the Ordinance and such regulations.

Wild Birds.—Ordinance No. XIII.[1] allows the issue of special permits to take prohibited birds for acclimatisation in other countries (s. 1) and permits the Lieutenant-Governor in Council by gazetted proclamation to vary the schedule to the Ordinance of 1908, by adding birds or removing birds from its scope either absolutely or subject to limitations.

Rice.—Ordinance No. XIX. empowers the Lieutenant-Governor in Council to fix a standard quality for imported rice by reference to price or otherwise, and imposes a customs duty (10*s.* per ton) on all rice up to or

[1] Amending the Ordinance of 1908: see Journal, N.S. vol. x. p. 353.

above the standard, and £2 a ton on all rice below the standard (ss. 1, 3). If rice seems to be below standard on importation it may be submitted for examination to a Government medical officer and another non-official person (s. 4). Rice condemned by a Government medical officer as unfit for human consumption is to be destroyed without compensation (s. 4).

Sago.—Ordinance No. VI. provides for the creation of sago reserves and the grant of licences to cut sago therein. It also deals with the cutting of sago on native lands and the purchase of sago from natives, and provides for the extension of the Ordinance to other indigenous trees and plants.

Lands.—Ordinance No. V. amends the Land Ordinance of 1906[1] by repealing s. 14 and substituting new provisions as to deposits and applications for leases, by allowing forfeited town allotments to be sold by auction or offered by tender (s. 2), and specifies the following places as towns within the Ordinance of 1906: Buna, Port Moresby, Daru, and Samarai.

Ordinance No. XXX. imposes survey fees in respect of certain applications for land under the Ordinance of 1906. The scale is to be fixed by gazetted proclamation.

Contracts of Service.—By the Freedom of Contract Ordinance (No. XV.) a person who, while outside Papua, has entered into a contract to work for an employer in Papua may within three months of arrival obtain from a magistrate the cancellation of the contract on proof that the agreed rate of salary or wages is lower than the rate current in the district for work of the same kind.

Hawkers' and Pedlars' Licences.—Ordinances No. XVI. repeals as to Papua the adopted law of Queensland as to licences for hawkers and pedlars.

Natives.—Ordinance No. XXV.[2] provides for the better regulation of native affairs. The term "native" includes:

(i) Aboriginal natives of New Guinea or any island adjacent thereto or of Papua;

(ii) Aboriginal natives (*a*) of Australia or any island adjacent thereto; or (*b*) of any island of the Pacific Ocean; or (*c*) of any of the East India Islands; or (*d*) of Malaysia; who live after the manner of aboriginal natives of Papua or the adjacent islands.

The Governor is empowered to appoint magistrates and set up Courts for native matters having jurisdiction only between natives and over natives (ss. 2, 3, 6), and to provide for appeals from the native Courts to the Central Court (s. 4).

The Governor is also empowered to make and provide for the enforcement of regulations affecting the affairs of natives with regard to (1)

[1] See Journal, N.S. vol. viii. p. 338.

[2] Repealing the Native Board Ordinance of 1889.

marriage and divorce; (2) succession to property in case of intestacy; (3) testamentary disposition of property; (4) disposal of the dead; (5) rights to real and personal property; (6) observance of customs; (7) cultivation of the soil; and (8) jurisdiction, powers, and procedure of Courts for native affairs in civil and criminal matters.[1]

Ordinance No. XXVI. amends the Native Labour Ordinance of 1906[2] in certain details: (1) by allowing payment of wages in advance instead of giving a guarantee (s. 3); (2) by regulating the security to be given on taking natives from Papua (s. 4); (3) by requiring with certain exceptions written contracts of service for natives engaged for over three months (s. 6); (4) by making Government medical officers absolute arbiters of the fitness or unfitness of a native who wishes to enter into a contract of service (s. 10); (5) by empowering the Commissioner of Native Affairs with the consent of the parties to vary native contracts of service (s. 11).

Ordinance No. XXVII. repeals the Removal of Natives Ordinance, 1907.[3]

9. DOMINION OF NEW ZEALAND.

[*Contributed by* Godfrey R. Benson, Esq.]

Public General Acts—36; Local and Personal Acts—42.

Finance.—No. 1, being the only Act of the first of the two sessions of Parliament in 1909, consists of temporary provisions made necessary by the postponement of the Appropriation Act.

Designation of Districts Amendment.—No. 7 amends the provisions primarily existing for the alteration, when desired, of the names of boroughs, counties, etc., and requires that in all such alterations in future preference shall be given to the original Maori names.

Land Settlement Finance (No. 8).—This is an Act to facilitate land settlement by providing for the formation of incorporated associations of settlers, which purchase land, borrowing money for the purpose, and subdivide the land purchased among their members. Such an association is only to be formed for the purpose of a particular purchase of which the terms have been approved in detail by the Land Commissioners, and with a definite scheme of sub-division and road-making similarly approved. The debentures which such an association is authorised to issue are guaranteed by the Government.

[1] Cf. the legislation of Fiji and Natal as to native affairs.

[2] See Journal, N.S. vol. ix. p. 432.

[3] See Journal, N.S. vol. ix, p. 432.

Naval Defence.—No. 9 makes provision for the gift to His Majesty of a ship-of-war at a cost not exceeding £2,000,000.

Death Duties (No. 10).—This Act, which replaces the Consolidated Act of 1908, deals in part with previous duties, the estate duty (corresponding in scope to the estate duty of the United Kingdom), and the succession duty (taking the place of the succession and legacy duties). The graduation of estate duty is made much steeper. Estates exceeding £20,000 but not exceeding £25,000 pay 7 per cent.; and the maximum rate, 15 per cent., is reached at £145,000. The Act imposes, moreover, a wholly new duty, "gift duty," evidently intended to check gifts made to avoid estate duty. The rate is 5 per cent. By another new provision in this Act the estate liable to duty includes gifts made within three years of the donor's death; the amount of gift duty paid in such a case is deducted from the amount of estate duty.

Hospital and Charitable Institutions (No. 11).—This is a consolidating and amending Act, replacing the consolidated Act of the previous year.

Friendly Societies (No. 12).—This Act, though primarily an amending Act, also replaces a consolidated Act of last year. Its most notable provision is that which institutes an actuarial valuation, to be made by a Government actuary, of every registered friendly society once every five years.

Inferior Courts Procedure (No. 13).—The general object of this Act is to prevent, so far as possible, proceedings in inferior Courts from being invalidated by reason of minor irregularities or omissions. Parties to civil proceedings in inferior Courts, such as a Warden's Court in the gold-diggings, are to be allowed by their consent to waive any irregularity in the proceedings (including slight excesses of jurisdiction), whether known or unknown to the Court. Again, in appeals against convictions by inferior Courts, large powers are given to the appellate Court to set right technical errors which could formerly have caused the conviction to be set aside. The Act provides also that informations or complaints before a magistrate or justice of the peace may be made in alternative allegations, though if these are such as to embarrass the defence the Court may order the complainant to strike out one alternative.

Industrial Schools Amendment (No. 14).—This Act, right or wrong, seems on the surface to be the widest departure yet made in British legislation from the older English tradition as to liberty. By it a person, provided that he is already an inmate of an industrial school, may be deprived of liberty from his twenty-first to his twenty-fifth birthday, and thereafter for any number of further periods of four years, for being "morally degenerate" or otherwise not (in the public interest) a fit person to be free from control. Sentences of this character may be passed by any magistrate, but only on the application of the manager of the industrial school at the direction of the responsible Minister.

Native Land (No. 15).—This consolidates, though with some amend-

ments, a number of the Acts which escaped the measures of 1908. They comprise, besides local and private Acts, no less than forty-nine public Acts which have been passed dealing with this subject since 1870.

Stamp Duties Amendment.—No. 17 increases the taxation in respect of race meetings and of certain receipts of racing clubs and race committees. It also increases the duty on bank notes from 10*s.* to 15*s.* per £100.

Coal-Mines Amendment (No. 18).—This Act, besides extending the range of compensation for injuries, prohibits employers from requiring of a person applying for employment in a coal-mine any medical examination or medical certificate of health.

Customs Duties Amendment.—No. 21 raises customs and excise duties all round by 1 per cent. of the previous amount of such duties in the case of tobacco, etc., and 2½ per cent. in the case of all other articles. But the effects of the reciprocal treaties with the (then) Colonies of South Africa are not to be disturbed.

Old Age Pensions Amendment (No. 22).—This Act amends some details of the provisions for calculating the income of an applicant for a pension.

Race Meetings (No. 23).—This Act prohibits horse-races except those conducted under the management of clubs licensed for the purpose by the Minister of Internal Affairs.

Magistrates' Courts Amendment (No. 26).—This Act provides, *inter alia*, that the defendant in proceeding in Magistrates' Courts for debt or damages must give notice of his intention to defend, and if he fails to give notice, cannot defend without leave of the Court. Special notice must further be given of the special defences of infancy, coverture, the Statute of Limitations, or a discharge in bankruptcy.

Defence (No. 28).—This Act, as is well known, provides for compulsory military training and imposes a liability to be called up for military service in time of war. The training does not at any period of life demand more of a man than fourteen days in the year in training camp and twelve half-days in the year. On the other hand the training begins at the age of twelve and lasts till thirty. The manner in which the material so provided could be organised in time of war does not appear in this Act.

Reformatory Institutions (No. 30).—Under this Act a person may be committed to an Inebriates' Home by a magistrate upon his own application, upon conviction upon certain charges, and on the complaint on oath of a relative supported by two medical witnesses. The period of detention must not exceed two years, but it must in no case be less than six months, nor, when an offence is proved, less than one year.

Further, upon the conviction of a female over fourteen of an offence such as drunkenness, and upon evidence of habitual profligacy, she may, in addition to any other sentence, be committed for a year to a reformatory of a special class sanctioned by this Act.

Shipping and Seamen Amendment (No. 36).—This Act, which is a consolidating as well as an amending Act, was reserved for the signification of His Majesty's pleasure.

SUPPLEMENTARY LIST OF ACTS.

Nos. 2, 5 and 6. Supply Acts.
No. 3. Aid to Public Works and Land Settlement.
No. 4. Land Tax and Income Tax.
No. 16. King-country Licences.
No. 19. Public Works Amendment.
No. 20. New Zealand Society of Accountants Amendment.
No. 24. Urewera District Native Reserve Amendment.
No. 25. Workers' Compensation Amendment.
No. 27. Gold Duty Amendment.
No. 29. Land for Settlements Administration.
No. 31. New Zealand State-Guaranteed Advances.
No. 32. Public Service Classification and Superannuation Amendment.
No. 33. Rotoiti Validation Act.
No. 34. Railways Authorisation.
No. 35. Appropriation.

10. FIJI.

[*Contributed by* W. F. CRAIES, ESQ.]

Ordinances passed—26.

Revenue and Public Loans.—No. XVI. amends the Customs Ordinances of 1881 [1] and (No. 1.) of 1908.[2] It provides for (*a*) production on requisition of the original invoice relating to imports (s. 4); (*b*) inspection and if need be fumigation or destruction of imported second-hand clothes (s. 5); and (*c*) the exemption of declared goods for warehouse charges, etc., if they are removed immediately after inspection or examination (s. 2).

Public Works Loan.—No. XXV. authorises the Governor to raise a sum not exceeding £100,000 by loan secured by debentures charged on and payable out of the general revenues and assets of the Colony, issued and registered in London and bearing interest at a rate not exceeding 4 per cent. The proceeds of the loan are applicable to permanent public works approved by resolution of the Legislative Council and sanctioned by the Secretary of State for the Colonies.

Supreme Court.—The Supreme Court Ordinance, 1875,[3] permits the

[1] Fiji Ordinances Revised (ed. 1906), p. 347.
[2] See Journal, N.S. vol. x. p. 354.
[3] S. 11 of Ordinance No. VII. of 1875: Fiji Ordinances Revised (ed. 1906), p. 19.

admission to practice in the Colony of barristers and solicitors who have been admitted in the United Kingdom and Australasia. Ordinance No. VII. extends this provision to include barristers and solicitors who have been admitted "in British North America or in any other British Colony which may be from time to time named by order of the Governor in Council."

Jury.—No. VIII. exempts from jury service in criminal trials salaried functionaries of a foreign Government who do not carry on any business and persons holding office in or in the employ of the Pacific Cable Board of the Colony.

Punishment of Young Persons.—No. XIII. adapts to the Colony s. 103 of the Children's Act, 1908, prohibiting sentence of death on a person under sixteen.[1]

Companies and Partnerships.—No. XI. prohibits the registration, except by special leave, of a company name containing the words "empire" or "imperial" or any word calculated to give the impression of Government support or connection; and empowers the Registrar, subject to appeal to the Supreme Court, to refuse to register a company if the name proposed is so like that of a registered company as to be calculated to deceive. The Ordinance applies to companies incorporated in Fiji or by the law of England or of any other Colony.

Shipping.—No. X. applies to Fiji ss. 437-43 of the Merchant Shipping Act, 1894[2] (deck and load-lines), and ss. 1-12 of the Merchant Shipping Act, 1906 [3] (safety), with the changes necessary to adapt these enactments to the circumstances of the Colony.

No. XII. makes provisions to ensure the careful handling and transport of bananas and other fruit and vegetables when transported for shipment or shipped for export. The Act is enforceable by European officers only. European is defined as "a person who is a member of a European race by birth or is a descendant from ancestors, who were members of a European race without admixture of the blood of any other race" (s. 1 (3)).

No. IX. amends the Pilots Ordinance (No. 12), 1908, by forbidding under penalty the demand by or payment to a pilot in respect of pilotage services of any sum in excess of the rate authorised by law.

Mines.—No. I. amends the Mining Ordinance of 1908[4] by defining "coal" to mean mineral coal but not to include shale or mineral oil, and providing for regulations as to mining for mineral oils and by altering the regulations as to prospecting licences.

Roads.—No. XIV. makes new provisions as to the constitution of Provincial Road Boards.[5]

[1] See Seychelles Legislation, *supra*, p. 372. [2] 57 & 58 Vict. c. 60.
[3] 6 Ed. VII. c. 48. [4] See Journal, N.S. vol. x. p. 355.
[5] Superseding ss. 8, 9, of the Roads Ordinance, 1907. See Journal, N.S. vol. ix. p. 434.

Municipalities.—No. XXV. (an Ordinance of 140 sections) consolidates with amendment the law relating to municipalities. It provides for the proclamation of towns, the constitution, election, and proceedings of and finance of town councils; for valuation and the assessment and collection of rates and the duties and powers of the councils as to streets, buildings, sanitation, drainage, and nuisances.

Traffic in Women.—No. XV. provides for the execution in Fiji of the international agreement concluded on May 18, 1904, for the suppression of immoral traffic in women.

Immigrants.—No. XVII. makes regulation for checking the immigration of undesirable persons, viz. destitute immigrants, stowaways, lunatics, persons suffering from contagious, infectious, or communicable disease, persons convicted elsewhere of certain crimes against persons or property, and prostitutes, gamblers, and habitual drunkards (ss. 2, 5). All ships must furnish passenger lists, and no one may land till the visiting officer has given his permission (s. 3). Provision is made for deporting persons who land without the necessary permission (s. 9).

Telephones.—No. XXVI. provides for the establishment of a telephone service as a Government monopoly, and gives the necessary power of entry on lands to set up the service and for its management.

Medical Practitioners.—No. XXIII. amends the Medical Practitioners, etc., Ordinance (VI.) of 1881 [1] as to the qualifications necessary for registration as a medical practitioner in Fiji. The Governor is authorised to add to the list in the Ordinance of 1881 colonies, states, or countries not there specified.

Trigonometrical Survey.—No. XXII. gives the powers of entry on land and setting up landmarks, etc., necessary for carrying out a trigonometrical survey of the Colony.

Liquor Prohibition.—No. VI. amends the Liquor Prohibition Ordinance of 1892 [2] by making specific regulations for the case of persons prohibited by a magistrate's order from being on licensed premises or being served with intoxicants. Penalties are imposed on persons who accompany to licensed premises a person whom they know to be prohibited or procure liquor for him or assist him to procure or drink liquor.

Arms.—No. V. amends the Arms Ordinance of 1883 [3] by adding a definition of immigrant who may not bear arms, and providing for monthly publication a list of persons who have received permits to bear arms.

Animals.—No. XXI. provides for the improvement in the breed of horses and cattle by requiring inspection of animals to see if they are fit for stud purposes, and by licensing the fit and preventing the unfit from breeding.

[1] Fiji Revised Ordinances (1906), p. 344.
[2] *Ibid.* p. 852. [3] *Ibid.* p. 470.

SUPPLEMENTARY LIST OF ORDINANCES PASSED.

Nos. II., XX. Appropriation.
Nos. III., IV. Native Lands.
No. XVIII. Legitimation on subsequent marriage of parents (not sanctioned).
No. XIX. Steam Whistles in Harbour.

V. SOUTH AFRICA.

1. CAPE OF GOOD HOPE.

[*Contributed by* F. G. GARDINER, ESQ., *Attorney-General of the Province of the Cape of Good Hope.*]

Acts passed—43.

Damage by Fences.—No. 9 provides that no owner or lessee of land without the limits of a municipality or village management board shall be liable for any damage caused to any person or property coming into contact with any fence on such land, unless such damage has been caused by the negligence of such owner or lessee in the erection or the keeping in repair of such fence.

Labour Colonies.—No. 10 makes provision for the establishment by any person or body legally representative of any charitable organisation, church, etc., of labour colonies for indigent persons or of industrial institutions for the instruction of the children of indigent persons or of destitute children. When the Minister to whom the administration of the Act may be assigned is satisfied as to the conditions under which a labour colony is to be founded and conducted, he may proclaim it as constituted under the Act. Certain principles must be embodied in the constitution of every labour colony under the Act, one of these being that provision must be made for the compulsory attendance at school of all children of such colony between the ages of seven and fourteen, unless they be engaged in a regular occupation and have passed the fourth standard. The Governor may, with the consent of Parliament, make grants of land to labour colonies or industrial institutions. Loans may be made out of funds provided by Parliament for the purposes of acquiring land or carrying out works connected with the establishment or development of a colony or institution, provided that at least one-third of the total expenditure in each case be provided from other sources. The Act enables the Governor to raise a loan not exceeding £50,000 for the purpose of carrying out its provisions. Destitute children, as defined by Act 24 of 1895 (as amended by

this Act), may be sent to an industrial institution. The term "indigent person" in the Act is confined to British subjects.

Game.—No. 11 consolidates and amends the Game Laws, 1886 to 1908.[1] Special protection is provided for "royal game" such as elephants, rhinoceroses, etc.

Cigarette Tax.—No. 12 levies and authorises the collection by means of stamps of a tax on cigarettes, at the rate of ½*d.* per half-ounce. The stamp has to be affixed on the package containing the cigarettes and cancelled, and the sale of cigarettes by retail unless enclosed in some package or other enclosure and duly stamped is penalised. A licence of £1 per annum is required for the manufacture of cigarettes for the purpose of sale.

Prevention of Corruption.—No. 13 deals with the bribing of agents. It follows closely the wording of the Imperial Act, 6 Ed. VII. c. 34.[2]

Shipping.—No. 14 enables the Government, as controllers and managers of certain harbours, to detain goods on receipt of notification from a shipowner that his freight thereon is unpaid. In case the freight is not released, paid, or deposited with the Government to abide the result of legal proceedings, the Government may after the expiration of a certain time sell the goods, and apply the proceeds to the payment of customs duties, expenses of sale and rent charges, and of the amount of the freight claimed by the shipowner.

Ballot.—No. 15 provides that all elections of members of divisional councils, municipal, borough or town councils, shall be by ballot.

Stamps and Licences.—No. 16 makes certain alterations in the law relating to licences for agents of foreign firms and for commercial travellers, and in the law relating to the patent medicine stamp duties. Officers of revenue, excise, or customs are authorised to enter business premises for the purpose of ascertaining whether the provisions of the Stamp Laws are complied with.

Liquor Law.—No. 17 entrusts to municipal councils the power to grant licences for the sale of light wines—*i.e.* natural wines the produce of any British South African Colony the alcoholic strength of which does not exceed 14 per cent. in volume.

Criminal Law.—No. 18 enacts, *inter alia*, that where a person is sentenced to a fine or in default of payment to imprisonment, and he pays a portion of the fine, the term of imprisonment shall be reduced proportionately. Provision is also made that where a magistrate forwards the record in a criminal case for review by a judge, he shall send with it any written statements or arguments which the accused may desire to append.

Mission Stations and Communal Reserves.—No. 29 provides for the creation of boards of management for those mission stations and communal reserves to which the Act by proclamation is applied. Before issuing such proclamation the people affected must be consulted, and, in the case of mission stations, the written consent of the trustees must be obtained. The

[1] See Journal, N.S. vol. ix. p. 453.

[2] See *Legislation of the Empire*, vol. i. p. 135.

board of management is given control over the land in a station or reserve, excluding, in the case of a mission station, land occupied by the society itself. Registers of occupiers of lots have to be framed by the Board, and certain rating powers are given to the Board in respect of such lots. No lot may be alienated without the consent of the Governor, and provision is made, in the case of the death of the occupier, to prevent sub-division of a lot amongst his heirs or legatees. Where ordinarily such lot would come to be sub-divided, the magistrate, after consultation with the board, has to appoint one person from among those beneficially interested in the lot to be the occupier, provision being made for payment by such appointee of compensation to the other beneficiaries. No liquor licence may be granted within the area of jurisdiction of a board of management.

Trading Stations in Native Locations or Reserves.—No. 30 enables the Governor to grant permission to occupy a site for a trading station upon Crown land occupied entirely by natives. This permission conveys no ownership, and the right to occupation may not be transferred without the consent of the Governor.

Native Locations.—No. 32 consolidates and amends the law with regard to private native locations.

Protection of Children.—No. 35 makes further provision for the protection of children on the lines of ss. 1 (1) and 2 (*a*) of the Imperial Act, 4 Ed. VII. c. 15. Failure on the part of a parent or other person legally liable to maintain a child to provide adequate food, clothing, medical aid, or lodging is deemed to be neglect. Provision is made for medical inspection of children in public elementary schools and for the cleansing of the person or clothing of any such child when deemed necessary.

Fencing Loans.—No. 37 enables the Governor to make loans to owners or occupiers of land, not being public bodies such as divisional councils, for the purpose of erecting jackal-proof fences.

Irrigation.—No. 40 allows a riparian owner on a perennial stream to impound and store, for purposes of irrigation, or, subject to existing rights and with the permission of the Water Court, for generation of power or for industrial or mining purposes, a reasonable share of such water as there may be in excess of the normal flow of such stream. What is the normal flow is a matter for the determination of the Water Court.

Excise.—No. 42 alters the excise duty so as to reduce the excise on wine brandy to one-half of that charged on other spirits.

Cattle Cleansing.—No. 43 makes further provision in respect to the cleansing of tick-infested cattle. It enables divisional councils, municipalities, and village management boards to incur expenditure in constructing and maintaining cattle-dipping tanks.

2. NATAL.

[*Contributed by* J. W. F. Bird, Esq., I.S.O., *Attorney-General of the Province of Natal.*]

Acts passed—44.

Native Administration.—Act No. 1 creates new organisations for the more effective administration of government among the native population. The Colony is divided into four districts, each of which is placed under the control of a District Native Commissioner, whose principal duties are to advise and assist natives, to attend meetings of chiefs, and keep the Government informed through the Secretary for Native Affairs of all matters of importance relating to natives.

A council is constituted to consider and advise upon all legislation and laws affecting natives. The members consist of the Secretary for Native Affairs, who is constituted as a permanent officer, subordinate to the Minister for Native Affairs, the four District Native Commissioners, and four non-official members chosen by the Governor in Council by reason of their knowledge of natives and their affairs.

The Act also defines with greater detail than in the existing Code (Law No. 19, 1891), but without any alteration in principle, the authority of executive officers in relation to native administration.

Union of South Africa (Referendum).—No. 2 was an Act passed to test the feeling of the Colony by means of an electoral ballot with regard to the acceptance or not of the proposed South African Union.

Railways.—The Alfred County Railway Act (No. 6) empowers the construction by Government of a narrow-gauge railway from South Shepstone to Murchison Flats, on the Pondoland border of Cape Colony.

Act No. 7 is an amending Act to exempt Government from payment of security under the Lands Clauses Consolidation Law, No. 16, 1872, when undertaking the construction of railways and other works authorised by the legislature.

Criminal Law.—An amending Act (No. 9) raises the age of consent in relation to criminal intercourse from fourteen to sixteen years.

Carnal knowledge of a girl over fourteen and under sixteen years is made punishable with imprisonment not exceeding two years, with or without flogging not exceeding twenty-five lashes. In the event of evidence *aliunde* as to age being wanting, the jury or Court may decide such question by the appearance of the girl.

Estate Duty.—Act No. 10 provides for payment of duties in respect of the administration of intestate estates of Indian immigrants.

Transfer Duty.—Act No. 11 fixes the date for the purposes of transfer duty on which a change of proprietorship or the vesting of an inheritance takes place.

Act No. 12 exempts leases from the Crown from transfer dues on registration thereof in the Public Registry of Deeds.

Renunciations in Bonds.—Act No. 13 amends Law No. 40, 1884, by providing that the *beneficia* available to women signing surety bonds, which hitherto could only be validly renounced before an official in Natal, may now be renounced before an advocate, attorney, or notary public anywhere in South Africa, and elsewhere before a Commissioner of the Supreme Court of Natal.

Exotic Animals and Animal Products.—Act No. 15 prohibits the importation of bees and the unmanufactured products of apiculture and zoological specimens except with the consent and subject to conditions prescribed by the Minister of Agriculture. Offences are punishable by a fine not exceeding £100, or in default of payment imprisonment with or without hard labour for a term not exceeding six months.

Administration of Estates.—Act No. 16 amends the law with regard to administration of estates and succession duty. The Master of the Supreme Court is substituted for the Registrar of Deeds as the officer to issue letters of administration. Before doing so he is to require security for payment of succession duty, and no transfer of land from the estate of a deceased person is to be registered unless the Master has given a certificate that succession duty is paid. Succession includes gifts within twelve months before death.

Penalties are imposed for neglect to give information and delay in paying succession duty.

Stamp Duty.—Act No. 17 exempts the Natal Native Trust and Zululand Native Trust from stamp duty upon grants of land.

Natal University College.—Act No. 18 provides for the establishment of a University College to be controlled by a Council and fixes the constitution and powers thereof.

Magistrates' Courts.—Act No. 21 amends the Magistrates' Courts Act authorising the imprisonment of debtors for disobedience of an order of Court by providing that upon payment of the debt the debtor may at once be released notwithstanding that sentence has not expired, except in cases of fraud, and in the same way the magistrate may order sentence to be suspended to give the debtor an opportunity of discharging the debt in the interval.

Licences.—Act No. 22 construes Act No. 18 of 1897 relating to licences as applying to all licences of the nature of licences for wholesale or retail business, including shop licences issued in municipal boroughs or townships, and gives to parties in an application for the renewal of a licence a right of appeal to the Supreme or to the Circuit Court.

Whipping.—Act No. 23 provides for the punishment of boys by whipping for minor offences, the intention being to avoid as much as possible boys being brought into contact with gaol-life and surroundings.

Finance.—Act No. 25 authorises a loan of £370,000 for the construction of railway and harbour works and other public works of a permanent nature.

Gambling.—The object of Act No. 31 is to stop gambling under the device of building or loan societies in which an advance of money is made by ballot or lot without security for repayment. Also to put an end to the offering of prizes in connection with the sale of cigarettes, tobacco, and liquor.

Protection of Wild Animals.—Act No. 33 forbids the export of elephants' tusks under 11 lb. in weight and imposes a duty of 20 per cent. on the export of horns, hides, etc., the object being to discourage the wholesale destruction of certain game such as elephants, rhinoceroses, hippopotami, etc.

Accountants.—Act No. 35 provides for the registration of accountants and the incorporation of a Society of Accountants in Natal.

Railway Employees.—Act No. 32 permits the railway employees who took part in the strike of 1909 to bridge over the period of non-employment so occasioned for the purposes of the Public Employees' Superannuation Fund, which requires continuous employment.

Church Union.—Act No. 36 provides for the unification and amalgamation of churches holding the same creed as the Dutch Reformed Church and for the devolution of the civil rights conferred by law on those bodies.

Civil Servants.—Act No. 44 provides for the refund, under certain conditions, of superannuation deductions to women who have served for at least six years in the civil service and leave for the purpose of being married.

3. ORANGE RIVER COLONY.

[*Contributed by* W. R. Bisschop, Esq., LL.D.]

Ordinances passed—42.

Liquor Licences.—No. 3 amends the Ordinance relating to the possession of liquor by coloured persons, No. 8 of 1903.[1]

No. 4 renders certificates of analysis of alcoholic liquor admissible in evidence.

Parliament.—No. 5 defines the period of prorogation of Parliament.

Administration of Justice.—No. 6 extends the jurisdiction of special justices of the peace.

No. 14 provides for the admission as advocates in the Orange River Colony, without any further preliminary examination, of British subjects who have obtained the degree of "Doctor of Modern Roman-Dutch Law" at any recognised university.

[1] Journal, N.S. vol. vi. p. 402.

Prisons.—No. 17 repeals the Prisons Ordinance, No. 3 of 1903,[1] and enacts afresh the law relating to prisons.

The prisons are divided into two classes, viz. gaols and lock-ups. These are under the supervision of an Inspector of Prisons, appointed by the Governor, who also appoints all officers of gaols other than warders and members of the police force. All warders are appointed by the Minister to whom the controlling management of prisons has been assigned.

Provision is made for the reception of prisoners into custody in gaol, the detention of prisoners in lock-ups, the performance of hard labour, and the circumstances under which lock-ups may be used as gaols.

Male and female prisoners shall be kept separate, as well as white and coloured persons. Gaolers are not allowed to punish prisoners; such punishment belongs entirely to the jurisdiction of the magistrates. No prisoner shall be placed in irons, or be subject to any other means of forced restraint, unless (1) for violent conduct, escape or attempting to escape; or unless (2) there is reason to suspect that the prisoner is attempting to escape; or unless (3) the medical officer shall, in writing, advise such restraint.

Rules are made for the prevention of escape of prisoners, for the trial of prisoners for the contravention of regulations, the procedure to be followed being the same as that in the Courts of the Resident Magistrates, but the trial to be held within the gaol. Sentences of the magistrates shall be subject to review by the judges of the High Court.

Every other offence committed by prisoners shall be dealt with by the Resident Magistrate in his own Court.

Penalties are set out for offences committed by persons other than prisoners, *e.g.* for aiding a prisoner to escape, or attempting to escape, for conveying letters or forbidden articles to prisoners, etc.

The Governor is authorised from time to time to make, alter, and rescind regulations not inconsistent with the provisions of the Prisons Act, or on such subjects as are set out in the Act. The Governor may also from time to time by Proclamation constitute any gaol or portion of a gaol as a reformatory for the detention of juvenile offenders under the provisions of the Juvenile Offenders and Apprenticeship Ordinance, No. 5 of 1904,[2] and to make regulations providing for the use of such reformatories.

No. 22 extends the jurisdiction of Resident Magistrates in civil cases by increasing the pecuniary limits mentioned in the Magistrates' Court Ordinance, No. 7 of 1902.[3]

No. 27 amends s. 17 of the Administration of Justice Ordinance, No. 4 of 1902,[3] by extending to certain legal practitioners the opportunity of qualifying as conveyancers.

Animals.—No. 7 authorises the Governor from time to time, by Proclama-

[1] Journal, N.S. vol. vi. p. 401. [2] Journal, N.S. vol. vii. p. 169.
[3] Journal, N.S. vol. v. p. 383.

tion in the *Gazette*, to prohibit the introduction into the Orange River Colony, and to regulate the disposal, of exotic animals.

Public Health.—No. 9 again postpones the coming into force of the general operation of the Public Health Ordinance, No. 31 of 1907.[1]

Natives.—No. 12 provides for the establishment, licensing, and regulation of eating-houses and lodging-houses in locations and native reserves. The granting of licences shall be in the absolute discretion of the Colonial Secretary, after consultation with the town council, board of management, or other managing body (if any) of the community wherein the location is established.

Municipalities.—No. 13 amends the Bloemfontein Municipal Ordinance, No. 35 of 1903,[2] and the Municipal Corporations Ordinance No. 6 of 1904.[3]

No. 15 repeals Law No. 6 of 1894, and amends the law relating to the foundation of townships. The mode of procedure includes the appointment by the Commissioner of Public Works of a Commission of Inquiry, after the receipt of an application from the owner of a farm for the laying out of a township on such farm. The Commission shall, at the expense of the applicant, visit such farm and investigate the application. On their recommendation the application may be granted, and the applicant shall then submit to the Surveyor-General a plan showing the proposed design of the township. After approval, the applicant shall have the farm surveyed, and after survey forward to the Surveyor-General a general plan of the township for registration.

After certain portions of the land (as town lands, streets, lanes, squares, etc.) have been transferred to the Governor, the township shall be proclaimed and the *erven* be sold. All expenses shall be paid by the applicant, who shall furnish accounts of proceeds of sale of *erven* to the Surveyor-General.

The laying out of townships without permission is rendered subject to a fine.

Weeds.—No. 23 makes better provisions for the eradication of noxious weeds, and is similar to the Noxious Weeds Act, No. 12 of 1909, of the Transvaal.[4]

Agriculture.—No. 24 provides for the establishment of a Central Agricultural Society for the advancement and improvement of agriculture, and the holding of a Central Agricultural Show every year in the Colony. The general control of affairs is placed in the hands of a Central Board. This Board shall be composed of (*a*) twenty-five members elected annually from their number by the members of the Society; (*b*) one representative to be appointed annually from each of the agricultural societies of the Colony formed under the provisions of the Agricultural Act, No. 24 of 1908[5]; (*c*) one

[1] Journal, N.S. vol. ix. p. 464.
[2] Journal, N.S. vol. vi. p. 405.
[3] Journal, N.S. vol. vii. p. 171.
[4] Cf. p. 426.
[5] Journal, N.S. vol. x. p. 366.

representative annually appointed from any and each agricultural society in British South Africa outside the boundaries of the Colony; and (*d*) two persons appointed by the Government to hold office so long as the Governor shall deem fit.

Rules are set out for the election and appointment of representatives on the Board; the annual meetings of the Board; the election of the Chairman and the Committee, and the position of the Committee; the appointment of Treasurer and Secretary; the articles of association, and regulations; the annual subscription; the property, business, and local representation of the Society; the subsidy of the Society, and the annual contribution by the Government; the special contribution by the Government for prizes in the district of Bloemfontein; and the formation of a central union of agricultural societies in the Colony.

Irrigation.—No. 31 provides for the establishment and approval by the Government of the Colony of irrigation settlements, and to assist private irrigation schemes. For the purpose of establishing irrigation settlements and townships in connection therewith, the Governor shall be authorised to acquire land by expropriation under the provisions of the Expropriation of Lands and Arbitration Clauses Act, No. 11 of 1905,[1] and to set apart for such purposes any land which is the property of the Crown, and has not yet otherwise been disposed of according to law. The Governor shall further be entitled to sub-divide such land into separate holdings, and to dispose of the same by lease, sale, or in any other manner and under such conditions as may be prescribed by regulations framed by the Governor from time to time in that behalf.

For the benefit of these holders the Commissioner of Works, Lands, and Mines shall be authorised to impound, divert, take, and use from any river or watercourse and to convey, in accordance with the provisions of the Right of Passage and Water Ordinance, No. 10 of 1906,[2] to such settlements such a supply of water as may be required for the irrigation of these settlements, for the watering of stock, and for the domestic uses of the inhabitants thereof. Provisions may be made at the same time to prevent interference by riparian proprietors against such supply of water. As a rule no compensation shall be given to any riparian proprietor for the taking of such water unless the taking of the water would interfere with his own irrigation.

Works are prohibited which would diminish the supplying of water to the separate reservoirs of settlements.

The Governor may apply to these settlements the provisions of Ordinance No. 4 of 1907 (private),[3] relating to the election of committees of management, the powers and duties of such committees, and the framing of regulations therefor. Pending the establishment of such committee the Governor may make regulations, and in addition to the regulations made by the committee the

[1] Journal, N.S. vol. vii. p. 488.
[2] Journal, N.S. vol. viii. p. 357.
[3] Journal N.S. vol. ix. p. 465.

Governor shall be authorised to make further regulations on the subject set out in the Act.

The Governor may apply the provisions of the said Ordinance, No. 4 of 1907, to private settlements which have obtained his approval. With regard to these private settlements any landowners who shall have constructed any reservoirs of which the water encroaches on the land of his neighbouring farm shall have the right to use such land for the storage of water provided no cultivated land or buildings be thereby interfered with and provided he pays reasonable compensation for the use thereof.

Scab.—No. 32 repeals Ordinance No. 14 of 1903,[1] No. 12 of 1905,[2] No. 26 of 1906,[3] and provides fresh regulations for the eradication of scab in sheep and goats.

Agricultural Loan Fund.—No. 33 establishes and regulates the administration of a Land and Agricultural Loan Fund. The Treasurer shall place at the disposal of a Board consisting of himself and four other residents of the Colony appointed by the Governor a sum of £500,000 out of any loan raised under the Orange River Colony Public Loan Act, No. 40 of 1908,[4] in order to thus create a Loan Fund.

Out of that fund the Board may from time to time make advances, either by granting short-dated loans on real or personal security, or loans for longer periods and higher amounts on real security.

The purposes for which the loans may be given include the following:

(1) to pay off existing liabilities on land;

(2) to effect improvements by water power; fencing; planting orchards; erecting farm buildings; blocking sluits, dongas and watercourses, etc.;

(3) to pay costs incidental to the sub-division of land held in undivided shares;

(4) for the purchase of livestock, plant and machinery for agricultural purposes;

(5) for the purchase of land for agricultural purposes.

Short advances of sums not less than £50 and not exceeding £200 may be granted to applicants who are unable to furnish the security of first mortgage on immovable property, on personal suretyship of two landowners and on such terms as may be laid down under regulations from time to time to be made by the Governor on the recommendation of the Board.

Advances to recognised agricultural and irrigation settlements may be made on such terms and under such circumstances and conditions as may be set out under regulations to be fixed by the Board in accordance with the provisions of Art. 38 of the Act.

All other advances shall only be made on the security of a first mortgage on immovable property, not being within the limits of any municipality,

[1] Journal, N.S. vol. vi. p. 404.
[2] Journal, N.S. vol. vii. p. 488.
[3] Journal, N.S. vol. viii. p. 59.
[4] Journal, N.S. vol. x. p. 363.

proclaimed village, or township, and such advances shall be granted for no less an amount than £50, nor for a larger amount than £1,500. For purposes of irrigation schemes, in special cases, the Board may make advances not exceeding £3,000. In no case an advance on the security of mortgage of immovable property shall exceed 70 per cent. of the actual value of the immovable property whereon it is secured.

Every loan made under this Act shall be repayable by yearly or half-yearly instalments of principal and interest within a period of twenty-five years, unless the Board may deem fit to determine that a loan shall be repayable within a shorter period on conditions to be fixed by the Board.

Special provisions are made for the repayment of principal beyond the amount of half-yearly instalments and for the recovery of loans in default of payment of instalment and interest.

The rest of the provisions regard the administration of the fund, the mode of preparing the mortgage deeds, the regulations to be made by the Board, the audit of accounts, the offences committed under the Act, the duties and powers of the Board in respect of other funds, and the regulations to be made in respect of the administration of such funds. In the first schedule the covenants are set out to be implied in every mortgage on the part of the person executing the same as mortgagor in favour of the Treasurer.

Vaccination.—No. 25 amends the Vaccination Ordinance, No. 29 of 1903,[1] this Act to be read together with that Ordinance. Certain areas are declared exempt from the compulsory vaccination clause, and others may from time to time be declared by Government proclamation to be unexempted areas in the meaning of this Act. All children in an unexempted area shall be periodically visited at the instigation of the Colonial Secretary by district surgeons, and, if any pupils in such area attending school are found to be unvaccinated, the district surgeons are authorised to vaccinate such pupils on the spot. In exempted areas vaccination shall be voluntary.

Nevertheless, parents who live in the unexempted areas may deliver a declaration in writing and on oath made by them to the Resident Magistrate, to the effect that they conscientiously believe that vaccination would be seriously prejudicial to the health of their child, and such declaration shall exempt these parents from penalties for not having their children vaccinated.

Leprosy.—No. 26 repeals Part IV. of Law No. 31 of 1899 and amends the law relating to leprosy. Notice that anybody is suffering from leprosy must be given to the magistrate, who shall cause the alleged leper to be examined by two registered medical practitioners. If, upon their report, the magistrate is satisfied that the alleged leper is suffering from leprosy, a summary reception order may be issued by him directing that the patient shall be removed and detained in a leper hospital. Such summary reception order shall be of effect for one month. Within that time the magistrate

[1] Journal, N.S. vol. vi. p. 404.

shall, without delay, transmit two copies of his order to the medical officer of health in the Colony, who will make such further inquiries and investigations as he may deem fit. The medical officer of health shall lay all documents, together with his own report, before the Attorney-General, who again shall place the reports and other documents before a judge in chambers.

The judge, in considering the case, shall decide whether the patient shall be permanently detained in the leper hospital or shall be discharged.

The Governor is authorised to make, alter, or repeal regulations connected with the leper hospitals and the treatment of lepers.

Co-operative Societies.—No. 28 authorises the Governor to exempt companies established for co-operative purposes from certain provisions of the law relating to joint-stock companies. Such societies shall thereafter be exempt from the said provisions to the extent and subject to the modifications mentioned in the notice of exemption. Nevertheless, if any were already registered, such societies might remain registered as joint-stock companies.

Closing Time.—No. 30 regulates the closing time of shops in towns and villages. The Act obliges every shopkeeper within the limits or area of any municipality or village management board, within one month, to elect a time for the closing of shops, provided that the hour elected be not later than 7.30 p.m. At the expiration of one month the local authority shall notify in the *Government Gazette* the hour which has been elected by the majority of shopkeepers in their locality, and thenceforth such hour shall be the closing hour in that locality. If no clear majority has been obtained the local authority itself shall fix the closing hour. At such selected hour all shops shall be closed and no shopkeeper or his employees shall be entitled after such hour to sell any goods, or offer any goods for sale, or admit customers to his place of business.

Chemists' shops and shops of general dealers who hold a certificate under s. 50 of Ordinance No. 1 of 1904 [1] shall not be forbidden to sell medicines or surgical appliances in urgent cases after a specified closing hour.

The closing hour on Saturdays shall be 9.30 p.m., and all shops shall be closed altogether on public holidays.

No assistant shall be employed for more than fifty-four hours, meal hours excepted, in any one week in any one shop, and no shop shall be opened before the hour of five o'clock in the morning.

Local Loans.—No. 34 establishes a fund for granting annuities to persons who were wounded, and the widows and orphans of persons who were killed, during the late war, and for providing bursaries for certain educational purposes.

[1] Journal, N.S. vol. vii. p. 168.

Railways.—No. 35 provides for the construction in the Orange River Colony of a railway from Sanna's Post to Wepener.

No. 36 provides for the construction by the Railway Board in the Orange River Colony of a railway from a point on the railway line between Bethlehem and Harrismith to a point near the town of Villiers on the Vaal River, and thence to a point on the Germiston-Volksrust line in the Transvaal.

No. 40 provides for the construction by the Railway Board of a railway from a point at or near Standerton on the Germiston-Volksrust line to a point on the Klip River in the Transvaal, and thence to the town of Vrede in the Orange River Colony.

Expropriation of Land.—No. 37 provides for the expropriation of land required by the Government for police or school purposes other than land exempted from expropriation under Clause 3 of the Act.

Provision is made for compensation for such expropriation to be agreed upon between the owner and the Commissioner of Public Works, Lands, and Mines, or, failing such agreement, to be determined by arbitration.

Pensions.—No. 39 provides pensions and gratuities for certain officers of the late Orange Free State, and otherwise to interpret and amend the Pensions Ordinance, No. 23 of 1904.

Finance.—No. 1 amends the Orange River Colony Public Loan Act, No. 40 of 1908,[1] in some minor respects, and is extended by No. 16.

No. 2 amends the Transvaal Guaranteed Loan (Assumption of Part Liability) Act, No. 16 of 1908.[2]

No. 8 applies a sum not exceeding £400,600, on account, for the service of the year ending June 30, 1910.

Nos. 10 and 21 provide out of the Treasury balances for extraordinary expenditure on certain works and other services.

No. 11 applies a further sum not exceeding £39,377 for the services of the year ending June 30, 1908.

No. 19 provides a sum not exceeding £944,355 for the public service of the Colony for the year ending June 30, 1910.

No. 20 provides a further sum not exceeding £21,740 for the public service of the Colony for the year ending June 30, 1910.

No. 41 applies a further sum not exceeding £974 7*s.* 7*d.* for the service of the year ended June 30, 1909.

No. 42 provides certain moneys for the purpose of defraying the cost of railway construction in the Orange River Colony.

Errors in Laws.—No. 18 corrects certain errors in such Acts as are mentioned in the schedule.

[1] Journal, N.S. vol. x. p. 363.
[2] Journal, N.S. vol. x. p. 362.

4. TRANSVAAL.

[*Contributed by* W. R. Bisschop, Esq., LL.D.]

Statutes passed—37. One Private Act (No. 38).

Opium.—No. 4 amends the Opium Trade Regulation Ordinance, No. 25 of 1906,[1] and further regulates the purchase, sale, and possession of opium.

Medicine, Dentistry, and Pharmacy.—No. 5 further amends the Medicine, Dentistry, and Pharmacy Ordinance, No. 29 of 1904,[2] by providing fresh regulations as to the conduct of elections for the Medical Council of the Pharmacy Board, and by entitling British subjects (born or domiciled in any colony or territory of British South Africa, who are proceeding outside South Africa for the prosecution of their studies, and who are holders of a diploma or certificate granted after examination by any university or state examining Board whose curriculum and standard of examination required for such degree, diploma, or certificate is not lower than that prescribed by the General Council of Medical Education and Registration of the United Kingdom) to make application for registration as a medical practitioner or dentist in the Transvaal.

Bees, Honey, and Beeswax.—No. 6 regulates the importation of bees, honey, and beeswax into the Transvaal, by prohibiting the importation thereof altogether from any place outside South Africa, and of used bee-hives or used bee-hive accessories or appliances or anything which have been used to contain or manipulate bees or beeswax and by prohibiting the exportation thereof from any place whatever without special permission of the Department of Agriculture. It further authorises the Agricultural Department to inspect any consignment of bees imported as aforesaid, and any apiary and honey or beeswax which is intended for sale, and any consignment reasonably suspected of containing anything in contravention of the Act; and to cause to be cleaned, disinfected, or destroyed any apiary (if disease is found to exist therein) and bees and beeswax imported in contravention of this Act.

The Governor shall be authorised to make regulations for the carrying out of these provisions; and the prohibition of imports shall not apply to such territories or colonies of South Africa where reciprocal treatment exists regarding this subject.

Irrigation.—No. 7 amends the Irrigation Act No. 27, of 1908,[3] by fixing the point where the right to use water of a public stream begins and ends.

Administration of Justice.—*Inquests.*—No. 8 repeals the Inquest Proclamation, 1901,[4] except for the purposes of those provisions of the Workmen's

[1] Journal, N.S. vol. viii. p. 361.
[2] Journal, N.S. vol. vii. p. 179.
[3] Journal, N.S. vol. x. p. 376.
[4] Journal, N.S. vol. vi. p. 305.

Compensation Act, 1907,[1] to which that proclamation was applicable, and for the purposes of such inquests as are referred to in the Prisons Act, No. 8 of 1908.[2] It further amends the existing regulations, and also Ordinance No. 19 of 1906.[3]

Criminal Law.—No. 38 provides for the prevention, suppression, and punishment of offences against public decency and honour; offences in regard to dangerous performances and acts; offences by keepers of places of public resort; the divulging of secrets or confidential information by public servants; the publishing by newspapers of evidence of indecent character.

The Act also amends in certain respects the law relating to the detention of persons convicted of certain crimes (which are set out in the schedule), the Criminal Procedure Code, 1900, Part VIII., the Prisons and Reformation Ordinance, No. 6 of 1906.[4] It further provides for the establishment of industrial schools for children. In these schools may be detained children under the age of eighteen years who are found wandering, and have no home or settled place of abode, or are found destitute, or have their parents or parent in prison, or are under the care of parents or guardians of criminal or drunken habits, or whose parents have been convicted of certain offences, and of frequenting the company of reputed criminals; or children who cannot be controlled by their parents, or who are living under circumstances calculated to cause or encourage the seduction of the child; or who are—whilst under the age of fourteen years—found in any public place begging, or singing, performing for money or any other remuneration, or who fall within the provisions of ss. 11 or 12 of the Criminal Law Amendment Act of 1908.[5] Such children may be sent to any Government industrial school by order of a judge or a resident magistrate, at the instance of any person or of any society working for the reclamation of children. Any child lawfully sent to such an industrial school shall not leave the same previously to its attaining the age of eighteen years except by order of the Attorney-General upon the recommendation of the Board of such school.

The Attorney-General may—instead of sending the child to such an industrial school—authorise the placing of such child in the custody of any person in charge of a charitable institution. The child's parents or guardians may be compelled to contribute towards the child's maintenance to such an industrial school or institution.

Railways.—No. 10 approves and provides for the construction and acquisition by the Railway Board of the lines of railway mentioned in the schedule which are situate in the Transvaal Colony (among them the so-called Selati Railway), and authorises the Transvaal Government to advance certain moneys to that Board for that purpose.

[1] Journal, N.S. vol. ix. p. 469.
[2] Journal, N.S. vol. viii. p. 360.
[3] Journal, N.S. vol. viii. p. 363.
[4] Journal, N.S. vol. viii. p. 360.
[5] Journal, N.S. vol. x. p. 371.

Agriculture.—No. 12 makes better provisions for the eradication of noxious weeds by owners, occupiers, and possessors of land, and gives power to the Governor to make regulations for such purpose.

Co-operative Agricultural Societies.—No. 21 amends the Co-operative Agricultural Societies Act, No. 17 of 1908,[1] by providing, *inter alia*, that prior to registration each society shall transmit a list of all its members, containing their names, addresses, occupation and true signature, to the Registrar of these Societies, and of all changes that may occur in such lists.

Marriages.—No. 13 amends Arts. 1, 2, 3, 6, and 10 of Law No. 3 of 1871, and validates certain marriages solemnised by the Consul-General of the Netherlands between September 1900 and July 1909, acting under the authority of the First Volksraad resolution of September 10, 1896.

Natives.—No. 18 provides for the issue of passes to natives within European areas and for such other purposes as are incidental thereto.

Labour.—No. 20 establishes a Department of Labour to aid in the prevention of strikes amongst employees or lock-outs by employers, and to make provision for the settlement of industrial disputes by conciliation after investigation. The provisions of the Act regarding strikes, lock-outs, and conciliation apply to the mining industry, any undertaking carried on by a local authority for the supply of gas, electric light, water, or power, or for tramway or sanitary services, and to such other undertakings as the Governor deems it necessary that it should apply.

The Department shall be administered by the Inspector of White Labour under supervision of the Minister of Mines. In case any industrial dispute arises between an employer and his employees which cannot be settled amicably, application may be made by either party to the Inspector of White Labour for the appointment of a board of conciliation and investigation. Such board shall consist of three members, two to be nominated by either party and the third by the two members so appointed, or—if they fail to do so—by the Inspector of White Labour. Two or more applications may be referred to one board, and in such case the Minister of Mines may extend the number of members of the board to five, seven, or nine members. All expenditure in connection with such board is to be paid out of the general revenue of the Colony.

The board shall hold its meetings in the vicinity of the premises in which the dispute has arisen. Its meetings shall be held in public, unless on application or on its own motion it shall determine to hold any part of such proceedings in private, and decisions shall be taken by majority of votes. The board shall have power to summon and examine witnesses, to order the production of documents, to enter or cause to be entered any premises in connection with the dispute, and to employ assessors and experts.

[1] Journal, N.S. vol. x. p. 375.

The board shall use its utmost endeavours to settle the dispute, and parties may agree to be bound by the recommendations of the board. In such case such recommendation may be made a rule of Court under s. 17 of the Arbitration Ordinance, 1904,[1] and be enforced as provided by that section. If a settlement be arrived at, a memorandum of settlement shall be drawn up by the board and transmitted to the Minister of Mines. In case no settlement be effected, the recommendation of the board shall be submitted to the Minister. Both memorandum and recommendation shall be published.

Punishments are imposed against the offering and accepting of bribes and other offences against the Act.

Rand Water Board.—No. 22 amends the Rand Water Board Statutes, 1903 to 1906,[2] by providing, *inter alia*, the contributions by the holders of mining titles and local authorities to meet interest and redemption of Rand Water Stock, the means for recovery from the mines of contributions levied on tonnage crushed, and from local authorities of such contributions as are payable by them.

Representation.—No. 23 makes provision for the election of councillors of the municipalities of Johannesburg and Pretoria and such other municipalities as the Government may from time to time declare, in accordance with the principle of proportional representation.

Elections shall be triennial, and with a view to these elections, a voters' roll shall be prepared in March of every year, the first elections to be held in October 1911. The voting shall be by ballot. Each ballot-paper shall contain the names of all the candidates, and the voter shall place in the space opposite the name of each candidate the numerals 1, 2, 3, etc., in the order of his preference.

The candidates shall be declared elected in accordance with the votes so recorded among them.

Children.—No. 24 makes provision for the better protection of the lives of infant children under the charge of persons, apart from the children's parent or parents, for the purpose of nursing or maintaining such infant. Notice in writing of the infant's receipt, removal, or death shall be given to the magistrate of the district by any person receiving such infant. On receipt of any such notice the magistrate may take such measures as he may deem desirable in the infant's interest. For such purpose any field-cornet may from time to time visit and inspect any infant to whom the Act applies, the magistrate may appoint inspectors and visitors and order the medical examination of any such infant. Obstruction of inspection or examination of an infant and ill-treating or neglecting an infant shall be criminal offences under the Act. Relatives within the fourth degree and legally constituted guardians of an infant are exempted from the provisions of this Act.

[1] Journal, N.S. vol. vii. p. 177.

[2] Journal, N.S. vol. vi. p. 416, and vol. viii. p. 364.

Registration of Deeds.—No. 25 repeals the Deeds Proclamation, No. 10 of 1902,[1] and its Amendment Ordinance, No. 65 of 1903,[2] the Registration of Prospecting Contracts Ordinance, No. 11 of 1904,[3] s. 1 of the Town Lands Amendment Ordinance, No. 2 of 1905,[4] the Mining Titles Registration Act, No. 29 of 1908,[5] and ss. 57 and 58 of the Townships Amendment Act, No. 34 of 1908.[6] It further consolidates the law regulating the Deeds Office and Mining Titles Registration Office and the law relating to the Registration of Deeds and Mining Titles.

Fencing.—No. 26 amends the Fencing Act, No. 12 of 1908,[7] and Part II. of Ordinance No. 38 of 1904,[8] *inter alia*, by including natives in the expression "owner," and by making special provisions relating to the repayment by settlers of the cost of erecting fences under the latter Ordinance.

Estate Duty.—No. 28 repeals Law No. 15 of 1899 and makes fresh provisions relating to the payment of duty upon estates of deceased persons. Estate duty shall be payable with regard to any person who dies on or after July 1, 1909, within or outside the Transvaal Colony, upon the net value of the deceased person's estate as far as it is situated in the Transvaal Colony, on condition that such property would, when that death occurred, pass to some other person.

Shares and debentures in a company registered in the Transvaal and carrying on business there shall for the purposes of this Act be deemed to be property in the Transvaal Colony, although the deceased holder of such shares or debentures was resident or domiciled outside the Colony at the date of his death. Every such company shall be liable to transmit notice to the Colonial Treasurer of such shares or debentures as soon as the death of the holder thereof shall come to the company's knowledge.

Companies whose registered office is outside the Transvaal Colony shall have to satisfy the Colonial Treasurer that the larger proportion of their business is transacted or carried on outside the Transvaal Colony if they want to escape the payment of estate duty on their shares.

Every such company has to transmit a return showing the names and addresses of persons who are, according to its registers, shareholders or debenture holders on July 31 of every year.

Companies.—No. 31 repeals a number of Laws and Volksraad resolutions and Ordinances, as set out in the first schedule, and consolidates and amends the law relating to the incorporation, registration, and winding up of companies and other associations. The provisions of this Act are virtually the same as those of the English Companies Consolidation Act, 1908.[9]

The differences mainly regard such parts as are otherwise regulated by

[1] Journal, N.S. vol. v. p. 383.
[2] Journal, N.S. vol. vi. p. 406.
[3] Journal, N.S. vol. vii. p. 180.
[4] Journal, N.S. vol. vii. p. 493.
[5] Journal, N.S. vol. x. p. 378.
[6] Journal, N.S. vol. x. p. 380.
[7] Journal, N.S. vol. x. p. 375.
[8] Journal, N.S. vol. vii. p. 179.
[9] 8 Ed. VII. c. 69.

the Transvaal in special Acts. As mortgages according to Roman-Dutch law are created and registered in a manner foreign to English law, the main part of the Companies Consolidation Act, 1908, regarding mortgages and debentures has not been adopted. References to stamp duties in the English Act have not been embodied in the Transvaal Act, as these are separately regulated in the Acts providing for stamp duty and other revenues of the Colony.

The Transvaal Act does not provide any special limit as to the number of persons required for the formation of a company for banking purposes. It also does not recognise companies limited by guarantee.

The Transvaal Act prohibits companies from being registered under a name which may cause annoyance or offence to companies already on the register or with a name which includes the words "Imperial," "Royal," "Crown," "Government," etc., without having previously obtained the Governor's consent.

Another provision foreign to the English Act is the regulation of the manner in which notices of meetings to be held in the Transvaal have to be given to shareholders who are domiciled outside the Colony, either in or outside South Africa.

Mines.—No. 32 repeals the Mining Certificates Ordinance, No. 50 of 1903,[1] the Mines, Works, and Machinery Regulation Ordinance, No. 54 of 1903,[1] and its Amendment Ordinances, No. 31 of 1905[2] and No. 11 of 1906.[3] The principal modification consists in consolidation and modification of the powers of the Governor to make regulations as to mines, works, and machinery.

Stock and Share Dealers or Brokers.—No. 34 provides for the registration of premises in which stocks and shares are dealt with and all persons who carry on the business of stock and share dealers or brokers. No person shall be allowed to own, occupy, or have the control of any premises in the Transvaal Colony which are used either by the public generally or by the members of any association for the purpose of dealing in stocks or shares unless such premises have been licensed for such purpose by the resident magistrate of the district in which they are situated.

No person or body of persons shall in the Transvaal Colony be entitled to carry on the business of a dealer or broker in stocks and shares outside licensed premises unless they are licensed themselves under the Act.

The names and addresses of the licensed premises and the licensed persons shall be published in the *Gazette* by the Colonial Treasurer.

Registration of Businesses.—No. 36 provides for the registration of businesses, other than registered companies and certain other associations, which are carried on in the Transvaal Colony by one or more persons (whether in partnership or not) if a licence is required therefor by the Revenue Licences Ordinance, No. 23 of 1905.[4]

[1] Journal, N.S. vol. vi. p. 413.
[2] Journal, N.S. vol. vii. p. 496.
[3] Journal, N.S. vol. viii. p. 362.
[4] Journal, N.S. vol. vii. p. 95.

The particulars of the business and the persons carrying it on have to be supplied to the Licence Officer, who is appointed by the Colonial Treasurer. Notice has to be given of changes in title, constitution, or place where the business is carried on and of the transfer of the business. The Licence Officer shall keep registers in the prescribed form and supply sufficient information to the Registrar of Companies, who will keep the Central Register of businesses. These Registers as well as the Central Register shall be open for inspection on a written application, and copies may be obtained during the hours in which they are opened for inspection on payment of a fee of 1*s.* for every hundred words or less.

Special provisions are made as to the registration, dissolution, and insolvency of partnership. It is further provided that legal proceedings may be instituted by or against partnerships in the registered business style of the partnerships without setting forth the names of the individual partners.

Provision is also made to protect the name of a business by prohibiting the registration of a business by a name identical with a name of a business already registered or so nearly resembling that name as to be calculated to deceive. The same restrictions as in companies apply to the registration of businesses, viz. that a name calculated to cause annoyance or offence to any person, or suggestion of blasphemy or indecency, or including the words "Imperial," "Royal," "Crown," "Empire," or "Government," shall not be registered.

Special penalties are provided for default in complying with the provisions of the Act.

Racing.—No. 37 makes provisions for the regulation and control of horse, pony, and galloway racing, for the restriction of betting and wagering, and the prevention of the dissemination of information as to betting. Any person or association of persons who want to use ground for holding race meetings shall require a licence from the Attorney-General, to be renewable each year, and to be withdrawn at any time in case of non-compliance with these rules.

Betting is prohibited on certain days, and off the racecourse, as well as the publication of betting odds. Acts done in contravention hereof are punishable under the Act.

A further licence is required by a licensee for the holding of meetings to use a totalisator on a race day on a racecourse, and such totalisator requires the approval of the Commissioner of Police, while duty has to be paid to the Government on the gross takings, the net takings, and the unclaimed balances.

Authorisation may be obtained from the Attorney-General to keep open certain premises during two weeks after a race meeting for the settling of debts.

Finance.—*Erf Tax.*—No. 2 abolishes the payment of erf tax under Art. 5 of Law No. 4 of 1899 in certain municipalities and assesses the payment

thereof in certain other townships, while it provides that the land tax shall not be payable in respect of lots in townships.

Nos. 1, 9 and 16 are Supply Acts.

Revenue.—No. 15 amends Ordinance Nos. 16 and 23 of 1905[1] regarding trading licences, stamp duties and fees.

Architects.—The private Act No. 39 provides for the creation of the Association of Transvaal Architects, its Council to keep a register for the registration of all architects practising in the Transvaal (whether members of the Transvaal Institute of Architects or not); all assistant architects who had professional experience of at least seven years at the time of the coming into operation of the Act, and of those persons who were, at such time, possessed of qualifications and experience declared by proclamation issued by the Governor in Council, to be equal to the above-mentioned qualifications.

For the future only such persons shall be entitled to registration as have passed the examination or examinations to be instituted by the Council and prescribed by the by-laws of the Association or some other examinations which are by proclamation issued by the Governor in Council declared to be equivalent to these. On an equal footing with the Transvaal examinations shall be the examination for Associateship of the Royal Institute of British Architects or for membership of the Society of Architects of London.

Registration may also be granted in future to all persons who, at the time of the coming into operation of the Act, were registered as associates or fellows of the Royal Institute of British Architects, or members of the Society of Architects of London, or of the Transvaal Institute of Architects.

The Act further contains the rules for the payments of subscriptions, the holding of meetings, the election of the Council, the resignation of members, the making of by-laws, and further rules of the Association.

Supplementary List of Ordinances.

No. 3. Education Act (Further Amendment).
No. 11. Game Preservation (Further Amendment).
No. 14. Superior Courts Criminal Jurisdiction (Amendment).
No. 17. Land and Agricultural Bank (Further Amendment).
No. 19. Public Service and Pensions Act (Amendment).
No. 27. Master and Servants Law (Amendment).
No. 29. Shop Hours (Amendment).
No. 30. Townships (Further Amendment).
No. 33. Liquor Licensing Laws (Further Amendment).
No. 35. Local Authorities Rating (Further Amendment).

[1] Journal, N.S. vol. vii. p. 495.

VI. WEST AFRICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

I. GAMBIA.

Ordinances passed—22.

Protectorate.—Grants of lands in the Protectorate have been made under the Public Lands Ordinance of 1902, and some doubts seem to have arisen whether those grants were effective for all purposes. It is now provided (No. 4) that the holders of those grants shall have the same rights of possession, etc., as if the lands had been in the Colony.

Sugar.—Ordinance No. 5 gives effect to the Sugar Convention of March 1902.

Diseases (Animals).—Extensive powers are taken by No. 6 for preventing the introduction of infectious and contagious diseases, the formation of quarantine and isolation stations, the registration and control of cow-keepers, etc.

Death Penalty.—Death sentences are not to be passed upon young persons under sixteen. They may be detained during His Majesty's pleasure in such manner as the Governor may direct (No. 11).

Intestates' Estates.—A law similar to that noticed in the laws of East Africa is provided for the administration of intestates' estates. Here, however, the administrating officer is called the Curator (No. 19).

Departmental Offences.—A power to punish subordinate officers by fine is given by No. 20. The law applies only to officers, clerks, and labourers earning less that £100 per annum. The fine is not to exceed 20*s.* and may be imposed by the head of the department in respect of specified offences, among which are contravention of rules, disobedience to orders, damaging Government property, intoxication while on duty. The fine may be enforced by stoppage of pay. Heads of departments must report monthly to the Governor.

2. GOLD COAST.[1]

(i) COLONY.

Ordinances passed—17.

Gold.—In order to prevent illicit dealings in gold, no person other than a concession holder may without special leave deal in any gold-mining product, which is defined as meaning any gold other than native gold or manufactured gold. Goldsmiths and hawkers must be licensed.

[1] This Colony has recently (September 1910) lost the services of its able and energetic Governor, Sir John P. Rodger, K.C.M.G., who has died on his return after five years' strenuous work in West Africa.

Marriage.—The existing Marriage Ordinance of 1884 is amended in a considerable number of small details (No. 2). The substantial amendments of law seem to affect natives only. Thus, in the case of natives dying intestate having been married according to law, two-thirds of the estate are to be distributed according to the English law, and one-third according to native law. Effect is given to African custom by the following provisions: Adultery does not include "intercourse of a man married by native customary law with an unmarried woman," and any child born before the inter-marriage of his parents under this Ordinance and not procreated in adultery is legitimised.

Mineral Oil.—A concession with respect to mineral oil is not to be granted except to a British subject or a firm, syndicate, or company, registered in Great Britain or a colony, whereof the directors must be British subjects.

Immigrant Paupers.—A law similar to that of Sierra Leone (*v.i.*) is passed for the Gold Coast (No. 10).

Death Penalty.—The same provision is made as in the Gambia prohibiting sentence of death on young persons under sixteen (No. 12).

(ii) NORTHERN TERRITORIES.

Ordinances passed—2.

Spirituous Liquors.—Stringent provisions are made by No. 2, so as to prevent the sale of liquor to natives. The importation of liquor is confined to non-natives and allowed by permit only.

(iii) ASHANTI.

Ordinances passed—3.

Cemeteries.—Every chief of a town or village is obliged on the demand of the Commissioner to provide a cemetery, and to keep it in repair. Where such provision is made, burial in yards and compounds is forbidden (No. 2).

3. SIERRA LEONE.

Ordinances passed—30.

Native Chiefs.—By Ordinance No. 3 for the Colony, and No. 6 for the Protectorate, the Governor may, with the approval of the Secretary of State, depose any chief who in his opinion is unfit for the position and appoint a person to be chief in his place. In particular cases he may fine a chief for misconduct in any sum not exceeding £10. Another law (No. 13) authorises

the Governor to disapprove the election of a headman, and to remove headmen for misconduct.

Tariff.—New tariff provisions, superseding the principal law of 1900 and seven amending laws, are made by No. 4. The ordinary duty is 10 per cent. *ad valorem*, with a fair schedule of exemptions, which might perhaps have been extended with advantage. Thus only books imported for the education department are exempt. While nearly all machinery and mechanical apparatus are free, it would seem that carriages and motor-cars are liable to duty. The progress of the Colony would probably be more rapidly advanced by the free introduction of books and of every means of conveyance.

Public Officers' Guarantee Fund.—The Governor may require any officer employed in revenue collection to give security for the faithful performance of his duties, not exceeding £500. He must also contribute to the Guarantee Fund annually 1 per cent. of his salary. The Fund is to be administered by Directors appointed by the Governor. After an officer has contributed to the Fund for five years he is not to be required to contribute more than one-tenth of 1 per cent. of his salary, unless the state of the Fund at any time otherwise requires. On the retirement or death of an officer he or his estate gets a refund of nine-tenths of his contribution (No. 10).

Medical Practitioners.—The Ordinance of 1908, which entitled persons holding certain diplomas to be registered as medical practitioners, is extended (No. 19). Now a degree at any medical school in Europe, the United States, or Japan, which is recognised in the United Kingdom, qualifies for registration.

Immigrant Paupers.—If any person arrives in the Colony under contract of service, and becomes destitute and chargeable to the Colony, his employers are responsible for all costs incurred by the Colony, including cost of removal from the Colony. If a seamen is left behind by a ship, the master is liable for such charges, which may be recovered also from the owner, agent, or consignee of the ship (No. 24).

Human Leopard and Alligator Societies.—The temporary law against these murder societies is again continued by No. 1. Further provisions are, however, made this year by No. 28, which renders a person liable to fourteen years' imprisonment for possessing without lawful excuse any of certain scheduled articles. These are leopard and alligator skins shaped for use so as to make a man resemble those animals, knives with two or more prongs commonly known as leopard or alligator knives, and the native medicine commonly known as "borfima." The law contains also provisions for search warrants, special punishment of chiefs found aiding and abetting these criminal clubs, etc.

Railways.—Provision is made by Ordinance 30 for railway extension by private enterprise. The law appears to follow the Gold Coast Ordinance of 1907, which was described in our Review of that year.[1]

[1] Journal, N.S. vol. ix. p. 480.

4. NORTHERN NIGERIA.

Proclamations passed—21.

Railways.—Those who live laborious days in the study and working of our Railway and Lands Clauses Acts may be charmed with the simplicity of Nigerian methods. Many hundreds of miles of track will probably be laid under the powers of five short sections of Proclamation 3. The Governor may construct railways with all proper stations, etc. He may enter upon the lands required, paying compensation "for the actual damage, if any, occasioned in the course of such operations," and any person refusing to give up possession of land may be ejected. Plans are to be prepared and exhibited for inspection at the Secretariat. The Director of Public Works or the General Manager may make regulations and by-laws.

Native Chiefs.—Certain emirs, a king, a "Lakpenni," and a "Galadima" having been removed from their offices, have been settled at Lokoja and Ilorin. Proclamation No. 9 renders them liable to fine and imprisonment if they leave those places without leave of the Governor.

Judgments.—Where a decree or judgment has been obtained in a Provincial Court and it is desired to have it executed without the Protectorate, it may be transferred to the Supreme Court. It is then dealt with as a judgment of the Supreme Court.

The other laws make small corrections and amendments in previous legislation.

5. SOUTHERN NIGERIA.

Ordinances passed—23.

Intoxicating Liquor.—The distilling of spirits is forbidden except under a distiller's licence. It would seem that native distillation has hitherto been allowed (No. 2).

Desertion from Ships.—Penalties are imposed in the case of seamen deserting from or failing to join their ships. They may be arrested on shore by the master, mate, or consignee of the ship, without warrant, and forthwith taken before a Court (No. 16).

Municipal Board of Health.—The Board of Health for Lagos, already constituted under the Public Health Ordinance, 1908, is now incorporated and endowed with greater powers. It is made the authority for administering public laws as to auctions, spirits, dogs, markets, and public health generally, and it takes the fees payable under these enactments. A new source of revenue is assigned to it in the shape of a graduated wheel tax on all conveyances from hand-carts and bicycles to motor-cars (No. 18).

Protectorate.—The territory of Jebu Ode is within the geographical limits of the Protectorate, but has hitherto been governed by its native ruler. That ruler has now conceded his jurisdiction to the British Government. Technically, the provision is curious which vests that jurisdiction not in the Governor in Council or the Legislature of the Colony, but in the Supreme Court. The laws of the Colony generally are applied (No. 22).

Sedition.—Various seditious offences are made punishable under No. 23. They include exciting enmity against the King or the Government of Southern Nigeria, and promoting enmity between different classes of the population.

VII. EAST CENTRAL AFRICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

1. EAST AFRICA.

Ordinances passed—19.

Bills of Sale.—The intention of Ordinance 3 is to apply to the Protectorate the Bills of Sale Acts, 1878 and 1882, but it may be doubted whether that purpose is attained by the curious provision that this Ordinance "shall be read as one" with those Acts. The Ordinance does not otherwise apply the Acts, though it empowers the High Court to make rules for the proper application of the Acts within the Protectorate.

Collective Punishments.—Society has to be protected in African Protectorates by rough-and-ready laws, for which precedents may be found in the early history of England and the later history of Ireland. By Ordinance 4 the Governor may impose fines on villages, districts, or tribes, if after inquiry he is satisfied that any such community has harboured any criminal, suppressed evidence in a criminal case, failed to restore stolen property, or failed to use all reasonable means to bring the offender to justice where a man is found to be killed or seriously wounded within their borders.

Slavery.—Slavery was abolished by Ordinance in 1907, provision being made for compensation. It is now provided (No. 6) that claims for compensation will not be entertained unless made before January 1, 1912. The law of 1907 also provided that concubines (who were not to be deemed slaves) could apply to the Court for the dissolution of the bond of concubinage on the ground of cruelty. This provision is now repealed, with a proviso that all concubines lawfully held at the passing of this Ordinance, although free, shall with their children continue to enjoy all rights previously held under Mohammedan law, except that any concubine leaving her master without his consent shall sacrifice those rights, including the right to the custody of her children.

Witchcraft.—Efforts continue to be made to stamp out witchcraft.

Ordinance 9 provides that any person who for the purposes of gain holds himself out as a witch doctor or pretends to exercise or use any kind of supernatural power, witchcraft, sorcery, or enchantment, shall be liable to imprisonment for one year. Any person professing a knowledge of so-called witchcraft or the use of charms who shall advise any person applying to him how to bewitch or injure persons, animals, or other property, or who shall supply any person with the pretended means of witchcraft, is liable to imprisonment for ten years; and the person who puts the advice into practice is to be similarly punished. Chiefs and headmen cannot be prosecuted under this law without the sanction of the Governor.

Death Penalty.—Sentences of death are not to be passed on young persons, *i.e.* under the age of sixteen years. They are to be detained during His Majesty's pleasure in such place and in such manner as the Governor may direct (No. 10).

Municipalities.—While the laws above described exhibit one aspect of East African administration, the establishment of Municipal Councils by Ordinance 11 indicates the advances of civilisation. The Governor may by Proclamation transform a township into a municipality with powers and privileges, rights and responsibilities, such as we are accustomed to. Very extensive powers of subordinate legislation by by-law are conferred; but in some questions relating to public health the by-laws may be superseded or supplemented by regulations made by the Governor. The councils are authorised to borrow money for their general purposes with the sanction of the Governor. Though election of councillors is contemplated, the members are for the present to be nominated.

Intoxicating Liquor.—A very elaborate Law (No. 12) supersedes the existing laws of 1902 and 1903 as to the sale of liquor. No less than thirteen different licences are provided for, under the following heads: Wholesale, hotel, restaurant, malt, wine-merchants and grocers, general retail, club, railway station, theatre, temporary, brewers, steamship, and canteen. The control of licences is in the hands of licensing Courts for the several provinces, consisting of named officials and such non-officials as the Governor may appoint. Strict provisions are made against the sale of liquor to natives, except for medicinal purposes, and then the onus of proof of the necessity is thrown upon the seller. The licence duties range from Rs. 15 a day, for a temporary licence, to Rs. 500 for an annual general retail licence.

Equitable Mortgages.—In amendment of s. 59 of the Indian Transfer of Property Act, 1882, validity is given (Ordinance 14) to mortgages made by delivery to a creditor or his agent of a document of title to immovable property, with intent to create a security thereon. The intention is to assimilate the law in Africa to that in England as to deposit of title-deeds. A saving is added in favour of documents registered before the date of the Ordinance.

Sleeping Sickness.—The Governor may declare any district or place to be an infected place, and may thereupon make rules for the regulation of intercourse between that place and other places (Ordinance 15).

Fires.—Penalties are provided in the case of persons raising fire negligently on the property of others, leaving fire in open spaces without seeing that it is thoroughly extinguished, etc. Owners burning stubble, grass, etc., must see that the fire does not extend beyond their own property (Ordinance 16).

Intestate Estates.—An Administrator-General's Department is constituted by Ordinance 17. All intestate estates are placed in the hands of the Administrator-General, except those of Europeans leaving a widow or next-of-kin within the Protectorate.

Deportation.—The Governor may on sworn evidence deport any native who is conducting himself so as to be dangerous to peace or good order from one part of the Protectorate to another. Every order is to be reported to the Secretary of State (Ordinance 18).

Protection of Game.—The Game Laws, which were last revised in 1906, are again amended. The procedure by new Ordinance (No. 19) is to be highly commended, although it renders it difficult to trace all the changes. It is satisfactory, however, that each new law aims at greater restrictions upon the slaughter of wild animals. Four ordinary licences are provided for: sportsmen's, residents', travellers', and landholders'. The landholders' licence is confined to private lands. In the case of the other three respectively, the number of animals authorised to be killed is set forth in schedules. A sportsman's licence costs Rs. 750, a resident's Rs. 150, a traveller's Rs. 15, and a landholder's Rs. 45. None of these licences authorises the killing of animals named in the first schedule, among others elephant, giraffe, greater kudu and buffalo (cows), hippopotamus, and eland (in certain districts). A special licence to kill one elephant costs Rs. 150 in addition to the sportsman's or resident's licence; to kill two elephants, Rs. 450. A special licence to kill one bull giraffe costs Rs. 150 in addition. The regulations show a step in advance, but greater protection for the rarer animals is inevitable in the future. The Ordinance also makes strong provision for preventing the sale and export of horns, skins, etc., other than those obtained under the licences.

2. UGANDA.

Ordinances passed—20.

Collective Punishment.—An Ordinance similar to that of East Africa (*v.s.*) is passed for Uganda (No. 1).

Vagrancy.—Vagrants may be arrested by police officers without warrant, and if found by a magistrate to be so, may be committed to gaol for three

months. When in gaol they are credited with an allowance of 8 annas a day as wages, and when that fund amounts to the sum necessary for their passage home, they may be sent thither either by land or water (No. 4).

Applied Indian Acts.—Indian Acts amending or substituted for Acts in force in the Protectorate are not to apply unless expressly applied by Ordinance (No. 3).

Poll Tax.—Every adult male (*i.e.* above eighteen years) has to pay a poll tax of Rs. 5 per annum, unless he is exempted by the District Commissioner on account of age, infirmity, or disease (No. 5 and 17). Another Ordinance (No. 6) enables the Governor to reduce the tax to any sum not less than Rs. 2 in respect of any district.

Prisons.—A new Prison Ordinance (No. 9) is substituted for the law of 1903. It comprises all usual provisions as to prison staff, visiting justices, discipline and diet of prisoners, tickets of leave, etc.

Evidence.—The Indian Evidence Law, as adapted for Uganda use, is issued as Ordinance No. 11.

Death Penalty.—As in East Africa, death sentences on young persons under sixteen are prohibited (No. 12).

Mortmain.—Trustees appointed by any association of persons established for any religious, educational, literary, scientific, social or charitable purpose may apply to the Governor for a certificate of registration for themselves or the association as a corporate body. The Governor will insert in the certificate the particulars of the qualifications and number of the trustees, the amount of land to be held by them, and the purposes for which the land is to be applied (No. 16).

Cruelty to Animals.—Ordinance No. 18 is a law of normal type on this subject. It applies only to domestic animals and others kept in confinement.

Ostriches.—Ostriches are now dealt with outside the Game Laws by Ordinance No. 19. This seems proper, as the subject now includes provisions for the regulation of ostrich-farmers. Every farmer, who must be of European birth or descent, must be registered (fee Rs. 5). An ostrich-hunter pays Rs. 45 for a licence, while a feather merchant pays Rs. 15. Hunting ostriches and taking their eggs is allowed only for the purposes of ostrich-farming; thus a hunting licence is granted only to a farmer or his assistants. Returns must be made of the young ostriches captured. Feather merchants must deal only with ostrich-farmers, and they must keep careful registers of their transactions. A live ostrich cannot be exported without licence, for which the fee is Rs. 1,500. To export an unblown egg will cost a man Rs 75.

3. SOMALILAND.

Ordinances passed—2.

King's African Rifles.—The native force of this Protectorate is constituted as the 6th Battalion of the King's African Rifles. It is recruited for service in, or rather "is charged with the defence of the East Africa, Uganda, Nyasaland, and Somaliland Protectorates." The provisions as to enlistment, discipline, etc., follow the precedents of other African Protectorates (No. 1).

Poisons.—The Commissioner may by special permit authorise a person who does not hold a licence under the Poisons Ordinance of 1906 to import poisons in limited quantities for scientific purposes (No. 2).

Game.—By Administrative Orders the number of specified animals which may be killed under licence is altered.

Pearls.—An export duty of 1 per cent. *ad valorem* is imposed on pearls.

4. NYASALAND.

Ordinances passed—11.

Seditious Offences.—The exigencies of Protectorate Government require that unruly natives shall be removed from the district in which they are found to be dangerous to order. It is well that they should be detained at places within the Protectorate, where their surroundings may be similar to those in which they were bred. In Nyasaland, the Resident may detain any such person, reporting the matter at once to the Governor, who gives order as to place and manner and time of detention (No. 1).

Collective Punishment.—Ordinance No. 6 on this subject is similar to that of East Africa described above.

Native Labour.—Three existing laws are repealed, and the enactments relating to native labour are amended and consolidated in Ordinance No. 6. The subject is dealt with under three heads: service within the Protectorate, passes for natives leaving the Protectorate, and recruitment of natives. Contracts for service of more than one month must be in writing and executed before a magistrate. Wages must be made in cash with no deductions, excepted for deferred pay. All proper obligations as to housing, feeding, and medical attendance are imposed on the employer, while the employee is liable to summary penalties (enforced by a Court only) in case of disobedience, intoxication, desertion, etc. Passes are given by a magistrate, who must be satisfied that the native has made proper provision for his wife or wives and family, and that he is not evading his taxes or debts. Natives cannot be recruited for service outside the Protectorate except by licence and in districts in which such recruiting is allowed. The agreements must be made or terms arranged before a magistrate.

VIII. SOUTH ATLANTIC.

[*Contributed by* EDWARD MANSON, ESQ.]

1. ST. HELENA.

Ordinances passed—2.

Both Ordinances relate to supply.

2. FALKLAND ISLANDS.

Ordinances passed—9.

Marriage (No. 3).—This Ordinance extends the provisions of the Deceased Wife's Sister Marriage Act, 1907, of the Imperial Parliament, *mutatis mutandis*, to the Colony and its Dependencies.

Criminal Law (No. 4).—Sentence of death is not to be pronounced on a "child" or "young person." In lieu thereof they may be detained during His Majesty's pleasure under such conditions as the Governor may direct.

"Child" means a person under fourteen. "Young person" means a person between fourteen and sixteen.

Appeals to Privy Council (No. 5).—This Ordinance regulates the practice and procedure in the Colony on appeals to His Majesty in Council.

An appeal is to lie—

(1) As of right from any final judgment of the Court where the matter in dispute amounts to or is of the value of £500 or upwards or where the appeal involves some claim respecting property or some civil right amounting to £500 or upwards;

(2) At the discretion of the Court from any judgment of the Court, whether final or interlocutory, if, in the opinion of the Court, the question involved is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.

The remainder of the Ordinance deals with the form of application for leave to appeal, the conditions, the preparation of the record, and other matters of procedure.

Penguins (No. 7).—This Ordinance makes it unlawful for any person to kill or take penguins in the Dependencies, on pain of a penalty of £30. Masters of vessels allowing the vessel or any boat to be used for killing or taking penguins is liable to a penalty of £100.

Education (No. 8).—A system of compulsory education on the lines of the Imperial Act, 1872, is established for Stanley. All children between five and fourteen residing there must attend school unless receiving efficient instruction in some other manner, or prevented by illness or other unavoid-

able cause. Parents residing outside Stanley may have their children educated by Government itinerant or resident schoolmasters. There are provisions for the appointment of pupil-teachers. Regulations for Government schools are scheduled to the Ordinance.

Merchant Shipping (No. 9).—Portions of the Imperial Merchant Shipping Acts, 1894 and 1896, are made applicable to the Colony.

IX. NORTH AMERICAN COLONIES.

1. DOMINION OF CANADA.

Public General Acts—62 ; Local and Private—115.

News by Telegraph (No. 7).—The Governor in Council is authorised to pay out of the Consolidated Revenue Fund during the coming six years sums for the purpose of maintaining an independent and efficient service of telegraphic news from Great Britain for publication in the Canadian press. Before paying the amounts the Minister of Finance is, however, to satisfy himself that the benefits of the service are open on fair and reasonable terms to all newspapers published in Canada, and that not less than one-half of the cost of maintaining the service is paid by the proprietors of the newspapers participating in the benefits of it.

Combines Investigation (No. 9).—"Combine" is here defined as meaning "any contract, agreement, arrangement, or combination which has or is designed to have the effect of increasing or fixing the price or rental of any article of trade or commerce, or the cost of the storage or transportation thereof, or of the restricting competition in or of controlling the production, manufacture, transportation, storage, sale, or supply thereof to the detriment of consumers or producers of such article of trade or commerce, and includes the acquisition, leasing, or otherwise taking over or obtaining by any person to the end aforesaid of any control over or interest in the business or any portion of the business of any other person, and also includes what is known as a trust, monopoly, or merger."

When six or more persons, British subjects resident in Canada and of full age, are of opinion that a "combine" exists, and that prices have been enhanced or competition restricted by reason of such combine to the detriment of consumers or producers, such persons may make an application to a judge for an order directing an investigation into such alleged combine, and the judge, if satisfied that such a combine exists, is to refer the matter to a "Board" constituted under the Act and consisting of three members appointed by the Minister of Labour who are, after taking an oath of impartiality, to investigate and report in writing.

A person reported as guilty of any of the mischiefs involved in a combine

is to be guilty of an indictable offence and liable to a penalty of $1,000 and costs.

The Act is not to affect in any way the Trade Unions Act, 1906, No. 125.

Criminal Law.—No. 10 amends s. 22 of the Criminal Code by a new definition of "common betting place" and also s. 235 dealing with the offences of betting, pool selling, and bookmaking.

No. 11 adds to the Code a provision against theft of motor-cars.

No. 12 amends s. 424 of the Code in respect of the unlawful possession of rock ore or quartz containing gold or silver.

No. 13 imposes a penalty on motor-car drivers, driving on after an accident without rendering assistance and giving his name and address.

Government Annuities (No. 4).—Amends the Act of 1908 by authorising the sale of annuities by the Government by limiting the grant to the life of the actual annuitant and by providing for the conversion of annuities by married persons.

Currency (No. 14).—This Act fixes the denominations of money—dollars, cents, and mills—in the currency of Canada and the standard for gold and silver. It provides for the making of coins and defines what constitutes a legal tender, which includes a British sovereign. The Governor in Council may fix the rates at which any foreign gold coins are to be a legal tender.

Dominion and bank notes are to be issued in currency only. Assay commissioners are to be appointed to examine and test the fineness and weight of coins reserved for this purpose. Counterfeit coins are to be broken or defaced by officers employed in the collection of the revenue.

Dry Docks (No. 17).—With a view to encourage the construction of these the Governor in Council may authorise payment of a subsidy therefor.

Escheat (No. 18).—This Act confers a useful power. The Governor in Council is empowered—

(*a*) to make a grant of escheated property to any person who in the opinion of the Governor in Council had a legal or moral claim upon the previous owner or a just or natural right or claim to succeed to his property or to any part thereof;

(*b*) to carry into effect any disposition of such property which the Governor in Council believes the previous owner may have intended;

(*c*) to reward any person making discovery of such property to his Majesty.

Convention with France (No. 21).—The Supplementary Convention respecting the commercial relations between Canada and France is hereby approved.

Immigration (No. 27).—This is an Act of eighty-two sections with scheduled forms regulating immigration. "Immigrant," what it covers and what it does not cover, is very fully defined: (*a*) Idiots, imbeciles, feeble-minded persons, epileptics, and insane persons; (*b*) persons afflicted with any

loathsome disease or any disease which is contagious ; (*c*) persons who are dumb, blind, or otherwise physically defective ; (*d*) persons who have been convicted of any crime involving moral turpitude ; (*e*) prostitutes and pimps ; (*f*) procurers ; (*g*) professional beggars or vagrants ; (*h*) charity emigrants, unless on authority in writing shown from the Superintendent of Immigration ; (*i*) persons not complying with the regulations—all these are prohibited immigrants.

Boards of Inquiry of three or more officers, including the "immigration officer," are to be appointed for every port of entry, with authority to determine summarily on the cases of immigrants. An appeal may be taken to the Minister.

Separate special regulations are made for passengers by sea and passengers by land.

Immigrants may be required to possess a prescribed amount of money. Rejected immigrants must be re-conveyed to country of birth or citizenship. Immigrants who have within three years of landing become undesirables may be deported.

Persons trying by false statements to deter immigrants may be prosecuted. Licences may be granted to "immigrant runners."

Plant Pests (No. 31).—This subject—the microbe world in agriculture—is one which is receiving more and more attention. The present Act authorises the Governor in Council to make regulations to prohibit the admission into the Dominion of vegetable "undesirables," to prevent their spread within the Dominion, the sale of infected plants, and to secure the notification of plant disease. Infected areas may be defined, and removal of vegetation from them prohibited.

Insurance (No. 32).—Insurance—owing to its rapid growth in every form in recent years—has assumed a position of first-rate importance as a factor in commercial organisation. We see it reflected in the present Act of 188 sections supplemented by forms and tables.

Under Part I. insurance business is not to be carried on without an annual licence. Every company carrying on life or fire business is to deposit with the Minister of Finance $50,000 ; to file certain documents—a copy of its charter, a power of attorney to its agent in Canada, and a statement of the affairs of the company. Annual returns must be made and a half-yearly statement of securities. A Superintendent of Insurance is to be appointed, who is to visit the head offices of insurance companies and report to the Minister of Finance on the administration of the Act. There are special regulations as to investments. Part II. deals specially with Life Insurance, and Part III. with Fire Insurance ; Part IV. with Insurance other than Life or Fire. Part V. contains provisions applicable to companies hereafter incorporated by Parliament.

Naval Service (No. 43).—This Act constitutes, as a department of the Government of Canada, a Department of Naval Service presided over by

the Minister of Marine and Fisheries, who is invested with the control of all naval affairs. The Governor in Council is empowered to organise and maintain a permanent naval force, which may be put on active service at any time. He may also organise a naval volunteer force. A Naval College is to be established, and arrangements made for target practice by vessels. The Naval Discipline Act of 1866 (U.K.) and the King's Regulations and Admiralty Instructions are adopted.

Milk.—No. 59 is a short Act to provide for the testing, as to measurement and accuracy, of glassware used in connection with milk tests.

Carriage of Goods by Water (No. 61).—Certain clauses in bills of lading and similar instruments exempting shipowners or charterers from liability for loss or damage to goods arising from negligence in the proper lading or care of the goods are prohibited ; so are clauses derogating from the obligation to make and keep the vessel seaworthy.

Miscellaneous Minor Acts.

Bounties on Crude Petroleum (No. 46).

Bounties on Iron and Steel made in Canada (No. 33).

Bounties on Lead in Leadbearing Ores mined in Canada (No. 37).

Civil Service.—No. 9 amends the Civil Service Act in a number of details.

Customs Tariff.—No. 46 amends the C.T. of 1907 in various items.

Fisheries.—No. 20 amends the Fisheries Act, 1906, in a number of particulars.

Gas Inspection.—No. 23 amends the Gas Inspection Act, R.S. 1906, No. 87.

Government Railways.—No. 24 amends the Government Railways Act, 1908, No. 31.

Irrigation.—No. 34 amends s. 13(2) of No. 38 of the Act of 1908.

Indians.—No. 28 amends the Indians Act, No. 81, as to recovery of possession of reserves.

Industrial Disputes.—No. 29 amends the Act of 1907 relating to these.

Judges' Salaries.—No. 35 amends No. 138 of the R.S. 1906.

Land Titles.—No. 36 amends R.S. 1906, No. 110, s. 26.

Meat and Canned Foods.—No. 38 amends the Act of 1907, No. 27.

Militia Pensions.—No. 39 amends the Act of 1906, No. 42.

National Battlefields at Quebec.—No. 41 amends the Act of 1907, No. 57.

National Resources Conservation.—No. 42 amends the Act of 1909, No. 27.

Navigable Waters Protection.—No. 44 amends the N.W.P. Act of 1906, No. 115.

Post Office.—No. 47 amends the Act of 1906, No. 66.

Prisons and Reformatories.—No. 48 amends the Act of 1906, No. 148.

Railways.—No. 25 authorises Government to acquire by lease certain

railways. No. 50 amends the Railway Act, 1906, No. 37. No. 51 relates to grant of subsidies.

Supply.—Nos. 1, 2, 3.

Seed Control.—No. 54 amends the Act of 1906, No. 128.

Telegraphs.—No. 55 amends the Act of 1906, No. 126.

Temperance.—No 58 amends the Act of 1906, No. 152.

Volunteers' Bounty.—No. 60 amends the Act of 1908.

Winding-up.—No. 62 amends the Winding-up Act.

2. BRITISH COLUMBIA.

Medicine (No. 6).—"The College of Physicians and Surgeons of British Columbia" incorporated under the Medical Act, 1898, is to be deemed a body corporate from its first establishment, and every person hereafter registered under the Act is to be a member of the College.

A Council is established to be elected from five medical electoral districts of the Province, with officers and an executive committee.

S. 28 defines the qualifications requisite for a member of the College and s. 29 provides for the keeping of a register. Inquiries may be directed by the Council as to alleged unprofessional conduct by members. It is "unprofessional conduct" for any medical practitioner to place the name of any druggist on a prescription.

No action is to be brought against the Council or Executive Committee for anything done *bona fide* under the Act.

"Practice medicine" includes advertising willingness to diagnose or prescribe. Practitioners are not to use any trade or corporate name for the premises where they practise.

No medical certificate is to be valid unless signed by a person registered under the Act. Actions for negligence or malpractice must be brought within a year.

Bodies of persons found dead or publicly exposed, unless claimed by friends or relations, may be delivered for dissection, also the bodies of persons dying in public State-aided hospitals, unless such persons otherwise direct.

Liquor in Clubs (No. 7).—"Liquor" here includes "all spirituous and malt liquors and all combinations of liquors and drinks and drinkable liquids which are intoxicating."

No such "liquor" is to be sold by any club to a member unless such club is licensed. The licence is to be issued by the Superintendent of Provincial Police with the consent in writing of the Attorney-General and to remain in force till the end of the year; the fee to be $100. The licence does not authorise the sale of "liquor" to minors.

The Superintendent of Provincial Police may at any time on the direction of the Attorney-General enter and inspect the premises.

A licence may be cancelled by the Lieutenant-Governor in Council if the conditions are violated.

Fruit Depôts (No. 19).—The Provincial Board of Horticulture may by this Act grant licences for the establishment of fruit depôts for the preparation for market and shipment of Provincial grown fruit: and loans for the establishment of such depôts may be made by the Lieutenant-Governor in Council.

Game Protection (No. 20).—Increased stringency marks the legislation in this matter. Exportation of certain animals is prohibited, and the hunting or shooting of animals imported for acclimatisation is prohibited. The Act does not appply to Indians and resident farmers in unorganised districts killing deer for their own or their families' use for food only.

Inspection of Hospitals (No. 25).—The Lieutenant-Governor in Council may designate what institutions—hospitals, orphanages, sanatoriums, maternity homes—are to be inspected and appoint inspectors for the purpose.

Statute Law Revision (No. 41).—The Lieutenant-Governor in Council is empowered under this Act to appoint Commissioners for revising, classifying, and consolidating the Revised Statutes of British Columbia, 1897, the Public General Statutes of British Columbia passed since the date of the Revised Statutes, and the Public Statute Law of England in force in and applicable to the Province. In doing the work alterations may be made in the language where requisite to preserve a uniform mode of expression.

This is a good work, and the time has come when it was much needed.

Water and Water Power (No. 48).—This is an important Act in seventeen parts. It confirms to the Crown the ownership of all water, fixes the work of measurement, creates a tribunal for determining claims, lays down the procedure for the grant of water licences, invests municipalities with special powers, regulates the storage of water, provides for clearing streams for driving logs, for the taking and using of land, etc.

Miscellaneous Minor Acts.

Agriculture.—No. 38 makes exceptions in favour of agriculture of the sale of poisonous substances.

Appeals.—No. 9 amends the Court of Appeal Act, 1907.

Arbitration.—No. 2 amends R.S. 1897, No. 9, s. 7, by giving power to supply vacancies.

Bush Fires.—No. 18 amends the Bush Fires Act, R.S. No. 84, s. 5, by allowing fires for clearing land on permit.

Coal Mines.—Nos. 33 and 34 amend No. 138 of the R.S.

Companies.—No. 8 repeals R.S. No. 44, s. 161, as to a free miner's licence to companies.

Dairy and Live Stock Associations.—No. 4 amends R.S. 1897, No. 18, s. 29, as to the incorporation of these associations.

Ditches and Watercourses.—No. 11 amends No. 14, s. 5, of the Act relating to.

Explosives, Storage of.—No. 14 amends R.S. 1897, No. 74, s. 2.

Farmers' Institutes.—No. 5 amends R.S. 1897, No. 20, s. 15, as to the incorporation and memorandum of association of these institutes.

Fire Insurance.—No. 17 amends the Fire Insurance Policy Act, R.S. No. 82, s. 5.

Horticultural Board.—No. 24 amends the H.B. Act, R.S. No. 94, s. 2.

Jurors.—No. 27 amends Acts relating to.

Land.—No. 28 amends the Land Act, 1908, in several matters of detail.

Land Registry.—Nos. 29 and 30 amend the L.R. Act, 1906.

Municipal Elections.—No. 12 amends ss. 14, 27, and 37 of the Act (1908) relating to.

Municipal Clauses Act amended (No. 37).

Magistrates.—No. 21 amends the Magistrates Act, R.S. No. 127, s. 8.

Police.—No. 21 amends the Police and Prisons Regulation Act, 1903-4.

Minerals.—No. 32 amends the Mineral Act, 1909.

Mines, Inspection of.—No. 35 amends R.S. No. 134.

Provincial Elections.—No. 13 amends s. 10 of the Act (1903-4) relating to.

Reformatories.—No. 40 substitutes the name of Industrial School for Reformatory.

Succession Duty.—No. 42 amends the S.D. Act, 1907.

Supply.—Nos. 39, 43.

Supreme Court.—No. 10 amends No. 15, s. 69, of the Act relating to this.

Timber.—No. 44 amends the Timber Manufacture Act, 1906.

Vendor and Purchaser.—No. 45 amends the law by, *inter alia*, making recitals in deeds twenty years old *prima facie* evidence.

3. PROVINCE OF MANITOBA.

[*Contributed by* H. STUART MOORE, ESQ.]

Acts passed—Public, 79; Private, 30.

Workmen's Wages (No. 2).—This requires that an assignment of wages or salary to be earned, given for a loan of less than $200, to be valid against an employer must be accepted by him and registered with the clerk to the County Council. This does not apply to assignments to secure indebtedness for necessaries. If the assignment is made by a married man living with his wife, her consent must be obtained. No assignment is valid unless the loan exceeds 95 per cent. of the amount of wages assigned.

Hospitals (No. 7).—This Act amends the Charity Aid Acts and provides that in the case of a patient admitted to a public ward the municipality of which he was a resident must contribute to his support. In the event of the death of the patient the municipality is liable to contribute a sum not exceeding $15 towards the cost of his burial. In the case of incurables the municipality must either remove him or pay $1·50 a day. The municipality has a remedy against the estate of the patient for its payments and may agree with hospitals to commute their liability for a fixed annual payment.

Foreign Companies (No. 10).—This Act provides that certain corporations created otherwise than by or under the authority of an Act of the legislature of the Province shall not carry on business in the Province unless licensed under this Act so to do. The Act prescribes the method by which a licence can be obtained.

Fires.—No. 19 amends the Manitoba Evidence Act by providing that in actions for damages resulting from fire, proven to have been started by sparks from a railway locomotive, it shall be conclusively and indisputably presumed that such fire was occasioned either by negligent management on the part of the employees in charge of the locomotive or by imperfect construction thereof.

Game Preservation (No. 22).—The Game Protection Act, 1909, provides that Sunday be a close season for all birds and animals mentioned in the Act. Male deer, cabri or antelope, elk or wapiti, moose, reindeer, or cariboo may not be taken between December 15 and December 1 of the following year, and during the remainder of the year no one may take more than one of such animals. Every hunter must be licensed, and at the end of the season must return his licence with a sworn statement as to the number of animals taken by him. Every person who lawfully kills any of the above animals must produce its head or account for the same on demand of any person. No one may trap, take, or destroy any female deer, cabri or antelope elk or wapiti, moose, reindeer, or cariboo or the fawns of any such animal, or any bison or buffalo, or otter or beaver, at any time, or any mink, fisher or pekan, or sable or marten, between April 1 and November 1. Musk-rat are protected between May 1 and November 1, but municipalities may make special by-laws as to these animals. There are various provisions as to the capture of grouse, prairie-chicken, partridge, pheasants, plover, quail, snipe, and duck. And the number of such birds that each sportsman may take in any year is defined. Certain methods of capture are prohibited.

The nests and eggs of birds mentioned above are protected. The heads and skins of animals may not be exported out of the Province unless a special permit is obtained, but a non-resident is entitled to export a hundred geese or swans and fifty ducks. Guardians are appointed to carry out the Act.

King's Counsel (No. 28).—This Act provides that not more than four King's Counsel shall, except in certain cases, be made in any one year. King's Counsel must be of ten years' standing either of the Bar of Great

Britain or of a province of Canada or of the North-West Territories. The precedence of members of the Bar for the Province is (1) the Attorney-General of the Province; (2) members of the Provincial Bar who have been Attorney-General of the Dominion of Canada or of the Province according to seniority of appointment; (3) members of the Provincial Bar who have been Solicitor-General for Canada; (4) King's Counsel according to precedence assigned to them by the Lieutenant-Governor in Council, or according to seniority; (5) members of the Bar in the order of their call to the Bar of the Province.

Liquor Traffic (No. 31).—This Act amends the Liquor Licence Act, and provides *inter alia* for the voting for a local option by-law and the licensing of certain incorporated clubs to keep liquor for the use of its members. In this session the following clubs were incorporated by private Acts: the Adanac Club, the Commercial Club of Winnipeg, the Lake of the Woods Yacht Club, the Moose Club, and Winnipeg Beach Club.

Oculists (No. 47).—The Optometry Act regulates the practice of optometry or the employment of any means other than drugs, medicine, or surgery for the measurement of the powers of vision and the adaptation of lenses for the aid thereof. Boards of examiners in optometry are created to examine and license persons to practise optometry and to keep a register of its certificated licensees.

No one practising optometry may use the prefix "doctor" unless a licensed graduate of a recognised school of medicine. This Act does not apply to physicians or surgeons, nor to the vendor of glasses made in prescription of an oculist or registered optometrist or of ready-to-wear glasses as merchandise.

Criminal Law (No. 50).—The Probation of Offenders Act enables Courts of summary jurisdiction to release an offender on probation, and probation officers are appointed to see that such person fulfils his undertakings for good behaviour, and if necessary they endeavour to find him suitable employment.

Education (No. 56).—This Act makes numerous small amendments to the Public School Act.

Sale of Goods (No. 60).—The Bulk Sales Act, 1909, enacts that every person who buys goods in bulk for cash or on credit, before he completes his purchase, shall demand and receive of the vendor a written statement verified by the statutory declaration of the vendor or his agent containing the names and addresses of all the creditors of the vendor for amounts exceeding $50 together with the amount of the indebtedness or liability due. If this statutory declaration is not demanded and furnished the sale is deemed fraudulent and void as against the creditors of the vendor. On obtaining such declaration the purchaser, if he does not obtain the written waiver from the creditor, must deliver the purchase money to a trust company or official assignee for distribution under the Assignments Act. A sale in bulk means a sale or transfer of a stock of goods, ware, or merchandise, or part thereof, out

of the usual course of business or trade of the vendor, or whenever substantially his entire stock-in-trade or an interest in his business or trade is sold or conveyed.

Appropriation (Nos. 70 and 71).—These Acts provide $2,718,128 for the government of the Province for the year ending December 31, 1909.

4. SASKATCHEWAN.

The Legislation of Saskatchewan will appear next year.

5. PROVINCE OF ONTARIO.

[*Contributed by* James S. Henderson, Esq.]

Acts passed—165, of which 69 were Local or Private.

Elections.—No. 3, the Punishment for Personation Act, provides for summary proceedings before a police magistrate or two justices of the peace for the punishment of the offence of personation.

Public Officers.—No. 5, the Public Officers Act, enacts that no person shall be employed in any public office in Ontario who is not a British subject by birth or naturalisation, except where the employment is for temporary purposes. Commissions are continued on the demise of the Crown. The Act also provides the forms of oaths of allegiance and office, and for security being given by officers who are concerned in the collection, receipt, disbursement, or expenditure of public money.

Sheriffs.—No. 6 is the Sheriffs Act. It is for the most part a purely consolidating Act, dealing with the appointment and duties of sheriffs.

Public Revenue.—No. 9 is the Public Revenue Act, consolidating the law as to the collection and management of the revenue.

Audit.—No. 10 amends the Audit Act. It provides, *inter alia*, for a reference to the Treasury Board where the auditor has for any reason refused to certify that a cheque may issue. No. 11 also amends the Audit Act by providing that the fiscal year shall, for the purpose of the public accounts, include the period from November 1 in one year to October 31 in the next year.

Succession Duty.—No. 12 amends and consolidates the law on this subject. Estates the aggregate value of which do not exceed $10,000 are exempt from duty, as are also bequests to charity; property passing to certain relations of the deceased where the value of the property of the deceased does not exceed $50,000; and where the whole value of any property passing to any one person does not exceed $300. The Act also prescribes the rate of duty.

Law Stamps.—No. 13 is the Law Stamps Act. Court fees are to be paid in stamps, and there is an express prohibition against money being received by any Court or officer of Court for any fee.

Mining Regulations.—No. 17 amends the Mining Act. It enables the inspector and any person authorised by him to be present at, and take part in, the proceedings at any inquest held concerning a death caused by an accident at a mine. It further provides additional punishment where an offence calculated to endanger the safety of those employed at a mine has been committed wilfully by the personal act, default, or negligence of the accused.

Drainage.—Nos. 21 and 22 deal with aids being granted for drainage purposes.

Statute Law Amendment.—No. 26 amends the law in various particulars.

Fire Escapes in Hotels.—S. 29 amends the Act for Prevention of Accidents by Fire by requiring all hotels, instead of, as formerly, those more than two stories in height, to keep in each sleeping apartment above the ground floor a fire escape for the use of guests.

Libraries.—S. 21 enables the Library Board in certain cities to lease unoccupied portion of premises for the purposes of an art museum. (See also No. 80, *infra.*)

Shows.—S. 36 provides for detectives or constables having free access to all kinds of shows and exhibitions.

Insurance Companies.—S. 43 amends the Ontario Insurance Acts by providing that no transfer of shares of an insurance company, the whole amount whereof has not been fully paid up, shall be made without the consent of the directors; and whenever any such transfer is made, with their consent, to a person not apparently of sufficient means to fully pay up such shares, the directors are made jointly and severally liable to the company's creditors in the same manner and to the same extent as the transferring shareholder would have been. Non-assenting directors may protest and give public notification thereof, and in this way may exonerate themselves from liability.

Shorthand-Writers for Local Courts.—S. 45 enables the Lieutenant-Governor to appoint a shorthand-writer for the local courts of each county and provisional judicial district.

Judicature.—No. 27 enables a judge of the High Court to give judgment in any action, notwithstanding that pending the delivery of judgment he has resigned or been promoted, provided that such judgment be delivered within eight weeks of his resignation or promotion. Where a judge dies or resigns before the delivery of judgment in any cause or matter which has been fully heard by him or where any action, etc., has been tried by a judge, and judgment is not delivered by him within six months of the hearing, or in case of his resignation within eight weeks thereafter, then any party to the action, cause, or matter may, after serving one month's notice on the Senior Registrar, set the same down to be heard before a Divisional Court, and the case shall, unless judgment shall be delivered in the meantime, be heard by that Court upon the evidence that was before the judge.

No. 28 is the Law Reform Act. It deals with the branches of the Supreme Court, makes certain charges in their designation, provides for the abolition

of the offices of Chancellor and Chief Justices (except Chief Justice of Ontario) when vacancies occur, deals with the precedence of judges, etc. Every judge of the Supreme Court is made *ex officio* a judge of the division to which he is not appointed or does not belong. The Act also deals with the jurisdiction of county courts. It further makes provision as to agreements between solicitors and clients as to the remuneration of the former.

No. 29 is the County Court Judges Act. It deals with the tenure of office of those judges and their qualification.

General Sessions.—No. 30 is the General Sessions Act. Courts of general sessions have jurisdiction to try all criminal offences except homicide and the offences mentioned in s. 583 of the Criminal Code of Canada. The county judge is made the chairman of the Court, and by No. 31 he may try out of sessions and without a jury any person who is liable to be tried at the general sessions and who consents to be tried out of sessions and without a jury.

No. 32 amends the Surrogates' Courts Act in certain details. It *inter alia* provides that letters of administration are not to be granted to a person not resident in Ontario, and that probate is not to be granted to a person not resident in the British dominions unless such person shall give security.

No. 33 amends the Division Courts Act by providing that any action for wages of a woodman may be entered and tried in the Court for the division in which the contract for hiring was made, notwithstanding any stipulation in the contract of employment or otherwise. The Act also deals with the procedure to be followed in the garnishing of wages and salary.

Juries.—No. 34 consolidates the law as to the qualifications, exemptions, disqualifications, etc., of jurors.

Arbitration.—No. 35 consolidates and amends in details the law on this subject.

No. 36 consolidates the law as to the appointment of chambers of arbitration.

Lunatics.—No. 37 is the Lunacy Act. It enables the Court to make declarations of lunacy, and may direct an issue to be tried where the evidence does not establish beyond reasonable doubt the alleged lunacy. After the expiration of one year from the date of the order declaring a person a lunatic, where the Court is satisfied that such person has become of sound mind, it may make an order so declaring, or may direct an issue to be tried. The Act also contains provisions for the management and administration of the estates of lunatics.

Replevin.—No. 38 is the Replevin Act. It is almost wholly a consolidation statute.

Dower.—No. 39 consolidates the law on this subject.

Libel and Slander.—No. 40 consolidates the law on this subject.

Seduction.—No. 40 is the Seduction Act. By s. 3 it is provided that in an action for seduction brought by the father or mother it shall not be

necessary to prove any act of service performed by the person seduced, but the same shall in all cases be presumed, and no evidence shall be received to the contrary; but if the father or mother of the person seduced had, before the seduction, abandoned her and refused to provide for and retain her as an inmate of the house, then any other person who might at common law have maintained an action for the seduction may maintain such action.

Crown Administrations.—No. 42 is the Crown Administration of Estates Act.

Witnesses and Evidence.—No. 43 is the Evidence Act; it is almost entirely a consolidating Act.

Distress.—No. 45 deals with the costs of levying distress.

Judges' Orders.—No. 46 relates to the enforcement of judges' orders.

Execution.—No. 47 consolidates and amends in details the law of execution. It sets out property which is exempt from seizure, deals with execution against municipal corporations, etc.

Creditors' Relief.—No. 48 is the Creditors' Relief Act. In the main it is a consolidation Act.

Absconding and Fraudulent Debtors.—No. 49 provides that if a person resident in Ontario departs therefrom with intent to defraud his creditors, or any of them, or to avoid being arrested or served with process, being then possessed of any real or personal property therein not exempt from seizure under execution, he shall be deemed an absconding debtor, and such property may be seized and taken by an order of attachment for the satisfying of his debts. The procedure for this purpose is prescribed.

No. 50 provides for the arrest of fraudulent debtors about to quit Ontario.

Habeas Corpus.—No. 51 is the Ontario Habeas Corpus Act, and is a consolidation Act.

Constitutional Questions.—No. 52—another consolidating Act—provides for a reference to the Court of Appeal or High Court for hearing and determining any question which the Lieutenant-Governor thinks fit.

Damage by Flooding.—No. 53 makes provision as to this.

Police Magistrates.—No. 54 prohibits the police magistrate of any city having a population of more than 18,000 from practising as a barrister or solicitor, or being engaged in any business while holding office.

Crown Attorneys.—No. 55 deals with the qualification and appointment of Crown attorneys.

Bulls running at large.—No. 56 provides that no bull over the age of ten months shall be permitted to run at large. The owner of any bull running at large contrary to this provision is made responsible in damages for all injuries committed by it, and he is further made liable to a penalty not exceeding $10 and costs.

Escheats and Forfeitures.—No. 57 consolidates the law on this subject.

Mortmain and Charitable Uses.—No. 58 is almost entirely a consolidation statute.

Investments by Trustees.—No. 59 is a consolidation Act.

Ferries.—No. 60 is a consolidation Act.

Millers.—No. 61 deals with the tolls to be taken for grinding and bolting grain, and with the marking of grain bags.

Marriage.—No. 62 amends the Marriage Act by enacting that a judgment declaring a marriage invalid is not to be made by the consent of parties or in default of appearance or pleading. The Court may of its own motion require both or either of the parties to be examined. Notice of the trial in such matters is to be given to the Attorney-General for Ontario, who may intervene.

Notaries Public.—No. 63 is a consolidation Act.

Pharmacy.—No. 64 amends the Pharmacy Act in certain particulars.

Companies.—No. 66 enables conditions to be imposed in letters-patent of incorporation.

Guarantee Companies.—No. 67 enables the bond of a guarantee company to be accepted in lieu of a bond with sureties.

Railways.—No. 68 provides for the question as to the working of street railways on Sunday in cities with a population of over 50,000 being submitted to the electors. No employee is to be required or permitted to work for more than six days of ten hours each in any one week, nor upon any Sunday when he worked the previous Sunday.

Nos. 69-72 deal with subsidies to certain railways.

Municipalities.—No. 73 amends the Municipal Act in a number of details.

No. 75 prohibits the council of any municipality granting, with certain exceptions, franchises, etc., until the by-law setting forth the terms, conditions, and duration of the proposed grant has been submitted to and received the approval of the electors.

Statute Labour.—No. 77 deals with statute labour in unorganised townships.

Municipal Drainage.—No. 78 deals with proceedings to set aside by-laws, etc., relating to drainage work.

Municipal Light and Heat.—No. 79 enables municipalities to produce and supply steam and hot water for heating.

Public Libraries.—No. 80 is mainly a consolidation Act. Travelling libraries may be established and maintained.

Motor Vehicles.—No. 81 amends the law as to motor vehicles. It provides, *inter alia*, that no motor vehicle shall pass or attempt to pass at a greater rate of speed than four miles an hour a street car which is stationary for the purpose of taking on or discharging of passengers. It also contains provisions as to proceedings for violations of the Act. In the event of a third or subsequent conviction the motor vehicle driven by the person convicted is to be seized, impounded, and taken into the custody of the

law for three months, and the costs of storage are made a lien upon the vehicle. If, however, the owner of the vehicle gives sufficient assurance to the convicting magistrate that the vehicle shall not be used upon a public highway during the period of impoundment, it may be delivered up; but if it shall be used during that period, it is to be deemed to be used without a permit. The Act contains a further provision that in the event of the employer of a person driving a motor vehicle for hire, pay, or gain being in the vehicle at the time of any offence against the Act being committed, he, as well as the driver, is made liable for the offence.

Liquor Licences.—No. 82 enacts, *inter alia*, that licences are not to be issued for premises not having all the tavern accommodation required by law. A penalty is imposed on every tavern-keeper failing or refusing to obey the written directions of a Provincial Inspector as to accommodation. In proceedings instituted in respect of liquor being supplied to a person under the age of twenty-one, the minor may be compelled, under pain of imprisonment, to disclose the name of the person who supplied him. Liquor in transit may be seized where the officer believes that it is intended to be sold or kept for sale in contravention of the Act. Vehicles on the highway and lands may be searched where the officer believes that there is liquor intended for sale in violation of the Act therein or thereon. Sample and commission licences may be granted.

Private Detectives.—No. 83 requires private detectives to be licensed, but there is a saving as to the employees of duly licensed private detectives. A licensed private detective is responsible for the conduct of his employees. The Act is not to apply to barristers, solicitors, or their employees.

Public Health.—No. 85 amends the Public Health Act by enabling the Provincial Board to make regulations for the prevention or mitigation of disease, not merely, as formerly, when the Province is threatened with any formidable epidemic, endemic or contagious disease in man or animals, but at any time. Notice of the existence of infectious or contagious diseases is to be given.

Dairy Products.—No. 86 provides for the registration of creameries, cheese factories, etc. Insanitary premises may be ordered to be closed.

Egress from Public Buildings.—No. 87 requires that in public buildings all doors are to open outwards. Cinematograph exhibitions are to be licensed, and are made liable to police inspection.

Education.—No. 88 is the Department of Education Act. It consolidates the powers, etc., of the Minister of Education.

No. 89 is the Public Schools Act, and is largely a consolidating statute, dealing with the whole subject of public elementary education.

No. 90 provides for the establishment of continuation schools.

No. 91 makes provision as to high schools. Classes in military instruction may be established. Only such text-books may be used as are authorised by the Regulations.

No. 92 consolidates the law as to truancy and non-attendance of children at school, the appointment of truancy officers, etc.

No. 93 makes provision as to school sites.

No. 94 relates to the formation and duties of municipal boards of education.

No. 95 amends in detail the University Act of 1906.

No. 96 is the Veterinary College Act. It provides for the appointment of a Principal and officers, as to the course of study, the rights and standing of graduates, etc.

6. PROVINCE OF QUEBEC.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed (Public, Private, and Local)—180.

Public Utilities Commission (No. 16).—This Act empowers the Lieutenant-Governor in Council to appoint a "Public Utilities Commission" of three members, and invests such a Commission with a wide jurisdiction, including general supervision and power of inquiry and inspection. "Public utility" means "every corporation other than a municipal corporation, firm, person, or association of persons, the businesses and operations whereof are subject to the legislative authority of the Province, their lessees, trustees, liquidators, or receivers appointed by any Court that now or hereafter own, operate, manage, or control any system, works, plant, or equipment for the conveyance of telegraph or telephone messages, or for the conveyance of travellers or goods over a railway, street-railway, or tramway, or for the production, transmission, delivery, or furnishing of light, heat, or power either directly or indirectly to or for the public."

Homesteads (No. 30).—The policy of protecting the home, which has found so much favour in Canada and Australia, is here extended to exempt the homestead, beds, bedding, wearing apparel, and necessary chattels from seizure and execution for debt in a number of particular cases.

Workmen's Compensation (No. 66).—"Accidents happening by reason of for in the course of their work to workmen, apprentices, and employees engaged in the work of building, or in factories, manufactories, or workshops, or in stone, wood, or coal yards, or in any transportation business by land or water, or in loading or unloading, or in any gas or electrical business, or in any business having for its object the building, repairing, or maintenance of railways or tramways, waterworks, drains, sewers, dams, wharves, elevators, or bridges, or in mines or quarries, or in any industrial enterprise in which explosives are manufactured or prepared, or in which machinery is used moved by power other than that of men or animals" are to entitle the person injured or his representatives to compensation in accordance with the following scale:

(1) Absolute and permanent incapacity, a rent equal to 50 per cent. of the employee's yearly wages.

(2) Permanent and partial incapacity, a rent equal to half the sum by which the employee's wages have been reduced in consequence of the accident.

(3) Temporary incapacity, to one-half the daily wages received at the time of the accident.

The capital of the rents is not, however, to exceed $2,000.

Accidents in agricultural industries or navigation by means of sails are not included in the Act.

The above scale applies only between employer and employee, and does not affect the employee's common law right against third persons. No contracting out is to be allowed.

Minor Miscellaneous Acts.

Bar of Quebec, Act amended (No. 52).

Companies, clerical errors in letters patent creating, may be amended (No. 60).

Dentists, law as to, amended (No. 56).

Education, school districts, etc., amended (No. 33).

Intoxicating Liquors, amended (Nos. 17, 18, and 19).

Mining, law amended (No. 27).

Pensions of Public Officers, amended (No. 15).

Physicians and Surgeons, Medical Act amended (No. 55).

Public Health, amended (No. 49).

Public Lands and Forests, sale of, amended (No. 24).

Succession Duties, amended (Nos. 21 and 22).

Sunday Observance, amended (No. 51).

Trade Disputes, amended (No. 32).

7. NEWFOUNDLAND.

[*Contributed by* Edward Manson, Esq.]

Acts passed (Public, Private, and Local)—40.

Arbitration (No. 1).—The Board of Trade may appoint Committees of Arbitration and also Committees of Appeal for settling such matters in difference as are voluntarily submitted to them. An award is to have the effect of a judgment of the Supreme Court.

Pharmacy (No. 4).—A board called the Newfoundland Pharmaceutical Society is constituted to make rules for holding examinations for druggists, and candidates passing are entitled to be registered as qualified druggists. No person unless so registered may sell drugs. All poisonous drugs—a list of which is scheduled—must be labelled "Poison."

Trade Unions (No. 6).—Trade union here means "any combination whether temporary or permanent for regulating the relations between workmen and masters or between workmen and workmen or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business." Trade unions may be registered under the Companies Act, 1899. The mode of registering is prescribed by s. 13. The Imperial Act, 38 & 39 Vict. c. 36, entitled the Conspiracy and Protection of Property Act, 1875, and the Trades Disputes Acts, 1906, are adopted, and are to apply to all trade unions registered under the present Act.

Marriages (No. 11).—Any duly appointed commissioner, staff officer, or captain of the religious society called "The Salvation Army," appointed for the purpose and duly licensed by the Governor, may solemnise marriages under No. 133 of the Consolidated Statutes.

Railways.—No. 12 provides for the extension of the railway system of the Colony.

Lady Barristers (No. 16).—This Act, after reciting that "it is desirable that women should not be excluded from practising at the Bar, nor from being enrolled as solicitors of any Court in this Colony," goes on to enact that where in No. 54 of the Consolidated Statutes (Second Series), entitled "Of the Law Society Barristers and Solicitors," the word "person" occurs, it is to be held to extend to and to include a female person, "so as to confer upon all women the right to be entered as clerks, admitted as law students, enrolled as solicitors, and called to the Bar, and to exercise fully all the rights and to impose upon them all the obligations which are conferred and imposed upon men under the provisions of the said chapter."

"Royal Mercy" (No. 17).—His Excellency the Governor is hereby empowered to remit any penalty or forfeiture on a convicted offender, and to extend the Royal mercy to any person who may be imprisoned for non-payment of any sum, though such sum may be in whole or part payable to some party other than the Crown.

Agriculture (No. 18).—For the encouragement of agriculture the Minister may pay out of any moneys in his hands for the following:

(1) The compilation of agricultural or farm notes for the local press.
(2) The delivery of lectures on agriculture throughout the Colony.
(3) The compilation of an agricultural primer for schools.
(4) The encouragement of cold storage in agricultural localities.
(5) Salaries of experts giving instruction in the cutting and drying of peat.

Woollen Manufacture (No. 19).—A premium of 5 per cent. is granted—for the encouragement of such manufacture—on all wool imported into the Colony, and on all wool raised and manufactured into wearing apparel, blankets, rugs, etc., in factories where more than ten persons are annually employed.

Discovery of Minerals (No. 21).—Any person who makes any discovery

of minerals in the Colony, on making application for a licence to work them may file a claim with the Minister of Agriculture and Mines, who is to give notice of such claim in the *Royal Gazette* and call upon all persons opposing it to give notice of objection. If no objection is notified before the expiration of sixty days, the claimant is to be deemed the true first and original discoverer.

Cold Storage.—No. 31 authorises the Governor in Council to guarantee persons, firms, or companies engaged in the cold storage business on certain terms.

MINOR MISCELLANEOUS ACTS.

Dentists Act, 1906, amended (No. 3).

Education. The Education Acts of 1903 and 1905 amended (No. 9).

Intoxicating Liquors. The Act of 6 Ed. VII. No. 17 amended (No. 5).

Magistrates, jurisdiction of stipendiary, under s. 4, No. 5, of 1 Ed. VII. extended (No. 15).

8. BERMUDA.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—33.

Banks (No. 4).—Every bank is to file its charter or certificate of incorporation: note issues are regulated, and yearly statements of accounts are required to be published.

Jurors (No. 5).—The qualification of jurors is prescribed; jury lists are to be published and there are provisions for the service of summons to serve on juries, for empanelling juries, for challenges, and for trials before special juries.

Conveyancing and Law of Property (No. 7).—This is the principal Act of the session. It follows substantially the lines of the English Conveyancing and Law of Property Acts, 1881 and 1882.

Police (No. 8).—The police force of the Colony is reorganised.

Pensions (No. 10).—Pensionable offices are defined, and the terms on which pensions are granted prescribed. Every public officer must retire at sixty if called upon to do so by the Governor in Council.

Pounds—Cattle and Dog (No. 11).—The pound—which is, with us, a decayed institution—is still flourishing in Bermuda. This is a consolidation of the law. A commissioner, that is a commissioner appointed under the Out Islands Administration Act, 1908, may authorise the erection of pounds and appoint a pound keeper. Impounded animals must be furnished with food.

Stallions are not to be at large on any public highway, or place of public resort, and if so found may be impounded. Dogs are also dealt with. Any dangerous or savage dogs straying on the highway may be detained by a

peace officer. The owner of a dog is to be liable in damages for injury to any animal by his dog, but the scienter doctrine is not abolished; the person seeking damages must show a mischievous propensity in the dog or negligence by the owner.

Squatters.—Magistrates are given power where squatters have taken possession of land without any probable claim or pretence of title to order them to deliver up peaceful possession of such land, crops, and animals, if any.

Slander (No. 24).—Words imputing adultery, unchastity, fornication, incest, incontinence, or drunkenness are made actionable without proof of special damage.

Printing of Papers and Books (No. 25).—Every person printing any paper or book in the Colony must put his name and place of abode or business upon the first or last leaf of the book or newspaper, and must preserve at least one copy with the name of the person who has employed him to print it.

A penalty not exceeding £200 is imposed on any person publishing any drawing, painting, print, photograph, or representation of any kind of a treasonable, seditious, blasphemous, immoral, indecent, or obscene character.

Emigrant Labourers' Protection (No. 26).—Contracts for emigrant labour must be in writing and executed by all parties before a judicial officer. Before execution the terms of the contract must be explained to the labourer. Certain conditions as to free board and lodging and wages are to be implied, and every employer must furnish the Governor in Council with guarantees for the due performance of the contract.

Miscellaneous Minor Acts.

Coroners (No. 6).—This is an Act consolidating the law.

Hackney Carriages (No. 15).—To be registered and drivers licensed.

Hospitals.—No. 30 amends the Act of 1906.

Hurricanes Relief (No. 28).—The Act of 1908 amended.

Interpretation (No. 1).—Interpretation Acts, 1907 and 1908, amended.

Magistrates.—No. 33 amends the Act of 1896.

Marriage (No. 27).—The law is amended in a number of particulars.

Public Authorities Protection.—No. 21 generalises and amends the law on this subject.

Public Libraries.—No. 14 provides for trustees of these at the several out islands of the Colony.

Quarantine.—No. 15 adds to the number of quarantinable diseases.

Sponges.—No. 32 amends the Act of 1898.

Supply (No. 2).

Tariff Reform (No. 3).

X. WEST INDIES.

1. THE BAHAMAS (1910).

[*Contributed by* HARCOURT MALCOLM, ESQ., *on behalf of the Bar Association.*][1]

Acts passed—5.

After the large and important outputs of the Legislature during the past few years, it might have been anticipated that there would be some falling off during the Session of 1910, as it was the last one of the late General Assembly, which was dissolved by Proclamation on June 7—only sixteen days before its dissolution would have taken place by effluxion of time. The financial condition of the Colony, coupled with the moribund state of the House of Assembly, has caused the most unproductive and colourless Session of many a year. The total number of Acts passed is only five, and none of them, except the Census Act, is of any interest. It is true that eight other Bills were introduced dealing with such important subjects as the creation of a Court of Appeal; the compilation of a new edition of the Laws (both the same Bills which were considered and postponed in the Session of 1909); the extension of magisterial jurisdiction; the regulation of the sale of poisons and drugs; and the provision of pensions to the widows and children of deceased public officers, but none became law.

I append (1) a *résumé* of all Acts passed; (2) a return showing origin and fate of Bills.

Supply (No. 1).—The Appropriation Act, 1910, appropriates the sum of £21,628 9*s.* 5*d.* for the performance of public works and for other services.

Expiring Laws (No. 2).—The Expiring Laws Continuance Act, 1910, continues two Acts in force for ten years.

Evidence of Statutes (No. 3).—The Evidence (British and Colonial Statutes) Amendment Act, 1910, repeals s. 4 of the Evidence (British and Colonial Statutes) Act, 1909.

Cattle, Dog, and Pound (No. 4).—The Cattle Amendment Act, 1910, supplies certain omissions in the Cattle Act of 1909 by conferring authority for the erection, repair, and use of pounds; for the appointment of keepers; and for the regulation of fees. The cost of erecting public pounds is paid out of the Treasury, while owners of private pounds must erect them at their own expense.

Census.—No. 5 provides for the taking of the Census in 1911, and at subsequent periods. The Act is of a permanent nature.

[1] At the Annual Meeting of the Bar Association it was resolved: "That the Association, under the presidency of the Chief Justice, constitute the local branch of the Society of Comparative Legislation in London. That an annual meeting of the Local Branch of the Society of Comparative Legislation be held as soon as it conveniently can be after the termination of the Annual Session of the Legislature."

RETURN SHOWING ORIGIN AND FATE OF BILLS.

Place of Origin.	Number of Bills Introduced.	Number of Bills not passed.	Number of Bills that became Acts.
HOUSE OF ASSEMBLY:			
Government	10	7	3
Select Committees	3	1	2

2. BARBADOS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed (1909)—29. Additional Acts passed (1908)—8.[1]

1908.

Quarantine (No. 40).—The Quarantine (Further Amendment) Act, 1908, amends the principal Act, 1905, by enacting that there should be inserted in the Convention set out in the first schedule to the principal Act a new article requiring each colony party to the Convention to notify all the others as to the measures taken against arrivals from countries or colonies, within less than from ten to eighteen days' steam voyage, and not parties to the Convention, wherein the diseases of plague, cholera, smallpox, and yellow fever have appeared.

Sale of Spirituous Liquors (No. 45).—The Liquor Licences Act, 1908, repeals like Acts of 1890, 1900, and 1904, and consolidates the laws relating to the sale of spirituous liquors in thirty-three sections, under the following headings: Licences, licensing sessions, licence duty, transfers, signboards, temporary licences, disorderly conduct on licensed premises, entry and search of the licensed premises, hawking of liquor, adulteration, police proceedings, penalties, appeals, and duration of Act until March 31, 1910.

Places for Public Entertainment (No. 46).—The Licensed Places for Public Entertainment (Amendment) Act, 1908, enables the Governor in Executive Committee to exempt persons holding concerts, etc., from the provisions of the principal Act (1889), and such exempted persons to sell spirituous liquors during the entertainment subject to conditions as to time of sale, holding a licence, and otherwise complying with the provisions of the Licensing Acts.

1909.

Trading Rates (No. 3).—The Interim Traders Act, 1909, enables traders to obtain temporary licences to trade from the parochial treasurer of the

[1] Acts are passed by the Governor, the Council, and the Assembly of Barbados, and are numbered consecutively for the calendar year.

parish upon payment of the licence duty fixed by an assessor in respect of the business carried on in the parish.

Chancery (No. 6).—The Chancery (Amendment) Act, 1909, amends the principal Act, 1906, and extends to holders of registered certificates of lien under the Sugar Industry Agricultural Bank Act, 1908, the powers given to like holders under the Agricultural Aids Act, 1905, and enables such holders, and other persons holding liens upon, or having an interest in any lands subject to a decree for sale by the Court and remaining unsold for two years from the date of the decree, to require the sale of the land by public auction to the highest bidder without reserve at the expiration of three months.

Sale of Spirituous Liquors (No. 8).—The Liquor Licences (Amendment) Act, 1909, requires the Licensing Board to issue witness summonses free of charge. All evidence before the Board is to be on oath. Provisions are made for the removal of the business from the licensed premises to others and the granting of druggist licences to sell still wines imported in bottle.

Quarantine (No. 16).—The Quarantine (Amendment) Act, 1909, repeals certain sections of the principal Act of 1905 and substitutes other provisions relating to inspection of vessels by the Health Officer on arrival in port, his decision as to condition of the vessel, its admission to pratique, and the landing of persons on board the same.

Rats (No. 20).—The Rat (Destruction) Act, 1909, provides for the payment of 1*d.* by the parochial treasurer of each parish to any person producing the head and tail of a rat, and the Act is to continue in operation until March 31, 1910.

The Christian Mission (No. 21).—The Christian Mission (Incorporation) Act, 1909, incorporates the persons named therein, being inhabitants of Barbados and associated together for the purposes therein set forth, into one body corporate and politic in deed, name, and law, by the name of "The Christian Mission," with perpetual succession and a common seal and in whom all property whatsoever belonging to the Mission is to vest. Powers of management, etc., are given by the Act.

Statute Laws Revision (No. 22).—The Statute Laws (New Edition) Act, 1909, appoints the Attorney-General and Solicitor-General of the Island Commissioners for the purpose of preparing a new and revised edition of the Statute Laws of the Island and making arrangements for the printing and publication thereof, and gives power to the Governor to appoint a substitute for either Commissioner unable to fully discharge the commission. In preparing the new edition the Commissioners are to have power to alter amended Acts in conformity with the amending Act; to consolidate into one Act all Acts relating to the same subject and record in such Act the date of the latest in date of the Acts included therein; to embody into one Act all public pensions and annuities; to omit (*a*) all Acts and parts of Acts expired, repealed, or spent; (*b*) all repealing Acts; (*c*) all amending Acts of

which the amendments have been embodied in the consolidating Act; (*d*) all schedules of repealed Acts; (*e*) all parts of title or preamble of any Act as relate solely to Acts omitted from the existing edition or to be omitted from the new edition; (*f*) all preambles of Acts which can be conveniently omitted; (*g*) the dates when Acts are to come into operation, when such omission can be conveniently made; to alter the sections of Acts by combination or division of sections; to divide and rearrange Acts into parts and divisions; to alter the order of and re-number the sections of Acts; to transfer sections from one Act to another more appropriate Act; to add or vary the short titles to the Acts; to do all other things relating to form and method necessary for the perfecting of the edition; to compile a full and complete Index of all Acts in the edition; to prepare an Appendix of all consolidated Acts showing by reference the Acts whence such consolidated Acts were derived, and another Appendix showing the Acts in the existing edition omitted from the new edition.

The powers conferred on the Commissioners are not to be construed as giving them any power to alter or amend the matter or substance of any Acts.

Every copy of the new edition when printed is to be stamped with the seal of the Island, and thereupon, after proclamation by the Governor duly published in the *Official Gazette*, the new edition is to become in all Courts of Justice the only Statute Book of Barbados up to the date of the latest Act included therein.

Volunteer Forces (No. 25).—The Volunteer (Amendment) Act, 1909, is consolidated with and amends like Act of 1901 and contains various provisions for officers or men joining the Reserve Forces and also for officers or men of the Territorial Force of England visiting the island to be temporarily attached to the island Force.

Immigration of Paupers (No. 29).—The Immigration of Paupers (Prevention) Act, 1909, enables the Harbour and Shipping Master to hold inquiries as to second and third-class passengers and detain for re-embarkation any persons, not being natives of Barbados, who shall appear to be unable to maintain themselves by reason of physical or mental infirmity. Penalties on refusal by the master of the ship to obey the order for re-embarkation are enforceable against the ship by maritime lien, and power is given to the Governor in Executive Committee to make all necessary regulations for carrying out the provisions of the Act.

3. BRITISH GUIANA.

[*Contributed by* Sir T. Crossley Rayner, K.C., *Attorney-General.*]

During the year thirty Ordinances were passed. Of these, five, Nos. 12, 13, 14, 15, and 25, are local and private Ordinances, and of these, three, Nos. 13, 14, and 15, are what in England would be described as public

Ordinances of a local character. The remainder are public general Ordinances.

The more important Ordinances are the following:

Customs Duties (No. 1) and **Tax** (No. 2) are the Ordinances passed annually under which the customs duties and inland revenue are collected.

Fire and Life Insurance (Law Governing) (No. 3).—It is exceedingly doubtful whether under the Roman-Dutch law, the common law of British Guiana, contracts of fire and life insurance can be enforced, and to remedy this state of things, there being large numbers of such contracts entered into in this Colony, this Ordinance was passed, which enacted that "the law administered by the High Court of Justice in England for the time being, so far as the same shall not be repugnant to or in conflict with any Ordinance now in force in the Colony," shall in all questions of fire and life insurance be administered by the Courts of the Colony. Under the Ordinance English statutes relating to insurance will apply to the Colony.

Quarantine (No. 5).—This Ordinance amends in several particulars the Quarantine Ordinance passed in 1908 (No. 14 of 1908) in accordance with the recommendations of the Central Quarantine Authority for the West Indies, and which all the colonies parties to the Quarantine Convention bound themselves to adopt. This Ordinance has since been repealed by a later Ordinance (No. 4 of 1910) and consolidated with other amendments.

Epidemic Diseases (No. 6).—This Ordinance gives power to take special measures of precaution in case the Colony is threatened with an invasion of a dangerous epidemic disease which the ordinary law is inadequate to deal with. The idea is to have the means of at once dealing with any dangerous disease which makes its appearance, instead of having to wait till the Legislature can give the necessary special powers, and to avoid delay, during which the disease might make serious headway.

Petroleum (No. 8).—This Ordinance, which amends one passed in 1872, has been passed in consequence of the increasing use of motor-cars and motor-boats in the Colony, in order to permit motor spirit being more easily obtained than was formerly the case. Petrol and similar oils, in view of their dangerous character, were required to be stored in magazines away from towns, and only a very small quantity could be kept by a private person on his premises. Under the Ordinance regulations can be made permitting a sufficient supply of petrol to be kept on any premises if proper precautions are taken against fire and explosion.

Deceased Persons' Estates (No. 9).—This Ordinance amends the law with regard to the administration of deceased persons' estates. It repeals and re-enacts with amendments an Ordinance passed in 1887 for the same purpose. The most important amendments in the law are the following:

(*a*) Provision is made that when any person dies intestate without leaving any child, the surviving wife or husband of such person shall be entitled to half of the deceased person's estate, subject however to any ante-nuptial contract or marriage settlement made between them.

(*b*) It provides for wills being deposited in the Registrar's Office, and for proof of due execution, a proceeding somewhat analogous to probate in England, though such deposit, unlike probate in England, is not necessary to enable the executor to administer the will. The executor who fails to deposit a will only incurs a pecuniary penalty; the non-registration does not affect his powers of dealing with the estate under the will. A later section (31) provides that deposit of a will with an affidavit of due execution shall have in the Colony the same effect as probate in common form in England. This is to enable such deposit to be recognised as probate in England under the Colonial Probate Act, 1892.

(*c*) Provision is made for compelling the witnesses to a will to make an affidavit of due execution upon being paid the same fee as they would have received had they been summoned as witnesses in an action. Cases have occurred in which witnesses have refused to make an affidavit unless paid an exorbitant sum.

(*d*) An important alteration is made in the law as to the administration of intestate estates. Just as no probate is necessary for the administration of a will, so no letters of administration are necessary to enable the person who, under the Roman-Dutch law, is the heir of the intestate, to administer his estate. Formerly when the heir had "adiated" the estate, that is, entered upon the administration, he was liable for all the debts of the deceased, whether there were assets or not, and a period of six months (the *jus deliberandi*) was allowed the heir to decide whether he would adiate or not, and no person was presumed to have adiated the estate until he had done something to show that he had done so. This led to great delay and loss in administering intestate estates, and the Ordinance provides that every heir shall be presumed to have adiated the estate, unless he renounces or declines the inheritance, but, like an English administrator, he is only to be liable for the debts of the deceased to the extent of the assets.

(*e*) Provision is made for enabling the Court to require security to be given by an executor or administrator, and all executors and administrators are required to file their accounts in Court within a year, and power is given to any person interested in the estate to apply to the Court to compel an executor or administrator to account, or for his removal.

(*f*) Provision is made (in pursuance of a reciprocal arrangement between the British Government and that of the United States) for the United States Consul to administer the property of a citizen of the United States who dies in British Guiana, if he has no heir or executor in the Colony.

Veterinary Surgeons (No. 10).—This Ordinance provides for the registration of veterinary surgeons, and forbids any one to call himself a veterinary

surgeon unless registered under it, and no person not registered can recover fees for professional services.

Young Offenders' Detention (No. 11).—This Ordinance was passed to extend to this Colony the Borstal System for the treatment of young offenders, and is based on Part I. of the Prevention of Crime Act, 1908.[1] The Ordinance provides for the establishment of a "Labour Institution" (already established), to which young offenders can be sent. They must be between the ages of sixteen and twenty-five, the age up to which an offender can be committed being later than in England, where the limit is twenty-one. In England commitment to a Borstal Institution can only be made on a conviction on indictment, but the Ordinance permits an order to be made either on a conviction on indictment or on a summary conviction, but in the latter case the offender must have been convicted a second time of certain specified offences, and the order must be approved by the Governor. In this Colony many offences can be dealt with summarily which in England can only be dealt with on indictment, and much of the usefulness of the measure would be lost if orders could only be made on indictment. The other provisions of the Ordinance are the same as in the English Act.

Probation of Offenders (No. 16).—This Ordinance, like the one last mentioned, is an attempt to introduce into this Colony the latest methods of dealing with offenders with the view of reclaiming them before they become hardened criminals. It is based on the Probation of Offenders Act, 1907,[2] and introduces into this Colony the system in force in England under which offenders can be released on probation on certain conditions as to reporting themselves and being of good behaviour, and provides for the appointment of probation officers to look after them.

Carrion Crows (No. 18).—Until lately carrion crows were thought to be useful as scavengers, and were protected from destruction, it being an offence to kill them. But it is now agreed that they are dangerous as disseminators of disease by fouling water, and that any usefulness they possess is more than counterbalanced by the risk of spreading infection. In 1908 an Ordinance (No. 4 of 1908) was passed allowing them to be killed in towns, but continuing to protect them in country places. This Ordinance now withdraws all protection, and permits them to be killed like vermin in any part of the Colony.

Sentences of Death (No. 20).—This Ordinance, following s. 103 of the English Children's Act, 1908, abolishes sentences of death on children, but the age up to which such a sentence could be passed was fixed at fourteen, instead of sixteen as in England, on account of the earlier development of children in the tropics than in England. But by an Ordinance passed in 1910 (No. 18 of 1910) the age was raised to sixteen so as to bring the law of this Colony on this subject into conformity with that of England and other colonies.

[1] 8 Ed. VII. c. 59. [2] 7 Ed. VII. c. 17.

Political Constitution (No. 24).—This Ordinance makes certain amendments in the constitution of the Colony. It makes any person who has failed to obey an order of the Court to pay over any money received by him in a fiduciary capacity incapable of being a member of the Court of Policy or Combined Court, and it reduces the property qualification necessary to enable a person to be elected a member of those Courts, but requires that such property shall be unencumbered by any mortgage. It also reduces the income qualification for a voter from $480 (= £100) a year to $300 (= £62 10*s*.). It also enables a candidate to withdraw his candidature between the nomination and the polling day, and enables the returning officer to declare the remaining candidate elected, so as to save the cost of an unnecessary poll.

Employers and Labourers (No. 26).—This Ordinance provides for the punishment of persons who engage as labourers in the goldfields or forests in the interior, and after receiving an advance of wages from their employer abscond without fulfilling their contract. This Ordinance has been rendered necessary by the development of the interior of the Colony, chiefly gold and diamond mining, and rubber and balata collecting, it being found that labourers who have received advances to go to the interior to work sometimes abscond, and in most cases it is useless to sue them for the return of the advance. The Ordinance provides that such persons may be fined or imprisoned, but provision is made to allow them an opportunity of completing their contracts if they wish to do so.

Habitual Criminals (No. 27).—This Ordinance is taken from Part II. of the Prevention of Crime Act, 1908,[1] and is an attempt to deal with the problem of the habitual criminal. It provides for preventive detention after the expiration of a term of penal servitude or imprisonment, but it follows the lines of the draft Bill as originally submitted to the Imperial Parliament, rather than the Act as subsequently passed, in that the preventive detention is indefinite, and its duration depends upon the conduct of the criminal, and is not for a definite period as in the English Act. In other respects the Ordinance follows the English Act.

Animals (Importation of Diseases) (No. 30).—This Ordinance enables importation of animals to be forbidden from places where diseases are known to exist, or allowed only on such conditions as will prevent the introduction of disease. It is partly based on s. 25 of the Diseases of Animals Act, 1894.[2]

The five private Ordinances comprise one (No. 12) for the reduction of the capital of a local company; one (No. 15) to vary a contract between the Government and a local railway company; one (No. 25) to incorporate a Roman Catholic Sisterhood and two relating to the Town Council of Georgetown, the capital of the Colony. Of these latter, one (No. 13) reduces the

[1] 8 Ed. VII. c. 7. [2] 57 & 58 Vict. c. 57.

qualification for the municipal franchise, and the other (No. 14) establishes a system of life insurance for the officials of the Town Council, so as to ensure some provision for their wives and children after their death.

4. BRITISH HONDURAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—21.[1]

Telegraphs (No. 1).—The Telegraph Ordinance, 1909, makes it a misdemeanour, with penal consequences, for any Government telegraphic official to disclose the contents of any telegraphic message entrusted to the Government telegraphic department for transmission and for any person without lawful authority to tap telegraph wires in order to intercept messages.

Chicle (Export Duty) (No. 3).—The Chicle (Export Duty) Ordinance, 1909, authorises the levying of one half-cent per pound on all chicle exported from the Colony.

Honduras Government Loans (No. 4).—The General Loan and Inscribed Stock Ordinance, 1909, regulates the procedure and method to be followed by the Government in carrying out Government loans through the Governor, or the Crown Agents acting on his behalf. The loans are to be raised either by debentures or by British Honduras Inscribed Stock, or partly by debentures and partly by inscribed stock, and the principal moneys and interest secured by the debentures or stock are thereby charged upon the general revenue and assets of the Colony. The Ordinance contains detailed provisions for the issue of debentures in London and the issue in England of inscribed stock under the provisions of the Colonial Stock (Imperial) Act, 1877. The application of the Ordinance is limited to raising loans in England.

Postal Regulations (No. 10).—The Post Office Ordinance, 1909, is consolidated with like Ordinance, being Chap. 78 of the Consolidated Laws. It empowers the Postmaster of the Colony to detain for the purpose of examination by the officer of customs any letters or postal packages from abroad which in his opinion may contain dutiable articles, in order that the duties may be collected before delivery of the letters, etc.

Public Officers' Guarantee Fund (No. 16).—The Public Officers' Guarantee Fund Ordinance, 1909, establishes the Public Officers' Guarantee Fund: provides for its administration, regulates the fidelity securities to be given by officials, their contributions to the Fund, the keeping of the accounts, and the payment of claims on the Fund.

[1] Ordinances are passed by the Governor with the advice and consent of the Legislative Council.

Tariff (No. 18).—The Tariff (Amendment) Ordinance, 1909, amends the tariff by making shades, electroliers, standards, and pendants for electric lighting dutiable articles, and by exempting from duty the baggage, luggage, and personal effects of foreign consular officers on their first arrival in the Colony.

Criminal Law (No. 20).—The Death Sentence (Children's) Abolition Ordinance amends the existing criminal law (Chap. 24A, the Consolidated Laws) by providing that sentence of death be not pronounced against any person under sixteen years of age.

5. JAMAICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Laws passed—42.

Tariff.—The duty on importation of cement, steel bars, wire cloth, wrought iron and steel work for buildings, also that on artificial limbs, crutches, etc., is removed (No. 2). In regard to the former class of goods, perhaps even the latter, we may see the effects of the great earthquake.

Elementary Education.—No child is to be received in a school before the age of six, or to be kept after his fourteenth, or in some cases his fifteenth, birthday. No Government grant is given where any fees are taken for tuition during school hours (Law No. 6).

Dogs.—The provisions of Law 24 of 1890 which prevents the importation of diseased cattle are extended to dogs, rabies being added to the cattle diseases mentioned in the Law (No. 19).

Legitimation.—Any child born before the marriage of his parents is legitimated by the marriage. The next provision of Law 34 has a Hibernian flavour: "The issue of any such legitimate child who has died before the marriage of his or her parents shall take by operation of law the same real and personal property which would have accrued to such issue if the parent had been born in wedlock."

Vagrancy.—By Law 35 vagrants on conviction, instead of being sent to prison, may be detained in prison-farms or other institutions approved by the Governor. The term is to be not less than two months or more than three years.

Judicature.—The Supreme Court is constituted under Law 42 of the Chief Justice and one puisne judge; but when the Court sits as a full Court the judge of the Kingston Court is added for the nonce.

The other Laws deal with appropriation, small amendments of previous Laws, and matters of private legislation.

6. TRINIDAD AND TOBAGO.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1909)—37.[1]

Agriculture: Livestock (No. 1).—The Fertilisers and Feeding Stuff Ordinance, 1909, applies to cattle, under which expression are included bulls, cows, heifers, calves, sheep, goats, swine, horses, mules, and asses; also to poultry, and to both wholesale and retail sales. It requires all dealers in fertilisers and foodstuffs, whether made in the Colony or imported, to take out an annual licence, which is to be issued only to persons resident in the Colony. Such licensed dealers must, on the sale of a fertiliser, give to purchasers an invoice stating the name of the article, and the respective percentage (if any) of nitrogen, soluble phosphates, insoluble phosphates, and potash contained in the article, and such invoice is to be deemed a warranty by the seller of the accuracy of the percentages stated in the invoice within prescribed limits of error. On the sale of foodstuffs for cattle or poultry the invoice must state the name of the article, and whether it has been prepared from one substance or seed, and, if artificially prepared otherwise than by being mixed, broken, ground, or chopped, the percentages (if any) of oil and albuminoids contained in the article, and such invoice is to be deemed a warranty that the stated percentages are correct within prescribed limits of error. If articles be sold as foodstuffs under a description implying their preparation from any particular substance, or production from any particular seed, or mixture of seeds, without indication of being compounded with any other substance or seed, the seller shall be deemed to warrant that the foodstuffs are prepared from those substances only or are the product of those seeds only, and are suitable to be used as such foodstuffs for cattle or poultry respectively. Statements made by sellers either in invoices, circulars, or advertisements as to chemical or other ingredients in fertilisers, or as to the nutritive or other ingredients in foodstuffs, are to be deemed warranties by the sellers. Fertilisers or foodstuffs containing ingredients mixed at the request of the purchaser are to be invoiced with the percentages before such mixture, and with a statement that they have been mixed at the request of the purchaser. The Ordinance contains detailed provisions as to the appointment of analysts and official samplers, and enables the Governor to frame regulations for giving effect to the Ordinance. It prescribes the penalties for fraud, the officials to institute prosecutions, and gives liberty of appeal to persons convicted.

Immigration (No. 3).—The Immigration (Amendment) Ordinance, 1909, is consolidated with and amends like Ordinances of 1905 and 1908, and in the

[1] Ordinances are made by the Governor with the advice and consent of the Legislative Council.

case of plantations wherein the mean death-rate is excessive restricts the further allotment of immigrants until the Protector of Immigrants is satisfied as to due regard to the health of allotted immigrants.

Steam Boilers (No. 4).—The Steam Boilers Regulation Ordinance, 1909, requires proper safety valves, steam pressure gauges, and water gauges to be attached to all boilers, and provides for the examination and issue of certificates by competent persons and production of the same to the inspecting officers appointed under the Ordinance. The provisions of the Ordinance are not to exempt any person from civil or criminal liability.

In the schedule are contained the forms of report of examination and certificate as to same and the condition of boiler.

Criminal Procedure (No. 5).—The Criminal Procedure (Amendment) Ordinance, 1909, is consolidated with and amends like Ordinances Nos. 2 and 53 (Revised Edition) and No. 14 of 1908. The Ordinance enables stipendiary justices of the peace to discharge prisoners in custody for an indictable offence, if the evidence offered by the prosecution seems insufficient to put the accused upon his trial, or, if such evidence warrants presumption of guilt, to send the prisoner for trial with power to admit to bail in bailable offences.

Sunday Shop Closing (No. 7).—The Sunday Closing Ordinance, 1909, makes it an offence with penalties and liability to imprisonment to open shops on Sundays, Good Friday, Corpus Christi and Christmas Day within the town of Port-of-Spain, with exemptions as to sale in shops of bread, milk, cooked food, and certain other provisions, coffins, newspapers, and as to guests and travellers in respect of hotels and licensed premises.

Sale of Produce (No. 8).—The Sale of Produce Ordinance, 1909, requires all dealers in licensable produce, which includes cocoa, coconuts, coffee, nutmegs, kola nuts, tonca beans, and rubber, to take out an annual licence in respect of the premises upon which the business is carried on. Licensed dealers are restricted from trading in uncured cocoa, coffee, kernel of coconuts, nutmegs, or tonca bean, and are also subject to various other restrictions, requirements, and penalties.

Firearms (No. 9).—The Firearms Ordinance, 1909, makes it unlawful for any person to carry or possess firearms without being licensed in conformity with the Ordinance; all persons trading in firearms must take out a licence. The Governor in Executive Council is empowered from time to time to prohibit by proclamation the carriage and sale of firearms and to order firearms to be delivered up.

Public Education (No. 13).—The Secondary Education Ordinance, 1909, regulates the management of the College established in Port-of-Spain for the promotion of Secondary Education, which is to be called "The Queen's Royal College."

Petroleum (No. 14).—The Petroleum Ordinance, 1909, regulates the carriage, discharge in port, storage, delivery, and sale of petroleum, under which term is included any product of petroleum, rock oil, Rangoon oil,

Burma oil, and any product of them, and oils made from petroleum, coal, schist, shale, peat, or other bituminous substance which when tested do not give forth an inflammable vapour at a temperature of 95° Fahrenheit; "dangerous petroleum" is petroleum whose vapour flashes at a temperature below 95° Fahrenheit, and its sale and use is subject to special restrictions. Provisions imposing penalties for offences in breach of the Ordinance with liability to imprisonment are contained in the Ordinance.

The Petroleum Ordinance, 1908 (No. 31), is repealed, with a saving of rights or liabilities accrued or incurred before, and proceedings pending at, the commencement of the Ordinance on June 24, 1909.

By the Petroleum (Drawback) Ordinance, 1909 (No. 15), persons using petroleum as a source of mechanical power are entitled to a reduction by way of drawback of duties.

Telephones (No. 17).—The Trinidad Consolidated Telephones (Limited) Ordinance, 1909, gives to the company, as the purchaser of the undertaking of the Commercial Telephone Company, powers to execute new works and maintain existing telephone systems subject to restrictions and conditions to be imposed from time to time by the Governor in Council, and to power for the Governor in Council in cases of emergency to take over the control of the whole service. The Government are to exercise general supervision and control by the appointment of electric inspectors.

The company is to pay to the Government 1 per cent. of its gross earnings in discharge of all taxation, except such as exists at the commencement of the Ordinance on July 31, 1909.

The schedule to the Ordinance fixes the maximum charges for telephonic communication.

Estate Duty (No. 19).—The Estate Duty Ordinance, 1909, is consolidated with and amends the like Ordinance, 1908, so that all estate duty payable shall be deemed a debt of the deceased person, and, in the absence of special directions in his will, be apportioned among the several beneficiaries under the will according to their proportionate interests. The amended schedule fixes the rates of estate duty at from 1 per cent. to 12 per cent., according to the principal values of the estates, whether outside or within the Colony, graduated from £100 to £10,000 and upwards.

Certain exemptions and abatements of duty in respect of the husband or wife and blood relations of deceased are set out in the schedule.

S. 30 of the principal Ordinance is repealed and the following section substituted: "The Royal Order-in-Council relating to Legacy and Succession Duty, 3rd February, 1851, except s. 32 thereof (which shall be deemed to apply to this Ordinance), the Legacy Duty Ordinance, No. 208 (Revised Edition), ss. 104 to 107 (inclusive) of Ordinance No. 99 (Revised Edition), are repealed." Then follows a saving clause.

The Ordinance is to commence as on the day fixed for the commencement of the principal Ordinance.

Marriage (No. 20).—The Marriage Ordinance, 1909, amends the like Ordinance, No. 59 (Revised Edition), and provides for the case of one of the parties being non-resident in the Colony.

Criminal Procedure (No. 23).—The Criminal Procedure Ordinance, 1909, amends the existing Criminal Procedure law by exempting persons under the age of sixteen years from sentence of death; and, if so sentenced, such persons are to be liable to be detained in prison during his Majesty's pleasure.

Land Taxes (No. 27).—The Land Charges Ordinance, 1909, amends the Land Charges and Land Taxes Ordinance, No. 204 (Revised Edition), by repealing s. 26 and substituting in lieu thereof another whereby lands or houses may be added to the assessment roll during its continuance in operation, and become subject to payment of taxes for the then current year and the preceding year or two years during which the assessment roll has been in operation.

By the Apportionment Ordinance, 1909, the like Ordinance No. 77 (Revised Edition) is amended in respect of Crown grants of land (not theretofore subject to land taxation) to persons who as grantees are to become liable to payment of the land taxes upon an apportionment basis fixed by the Ordinance.

Sale of Food and Drugs (No. 30).—The Food and Drugs Ordinance, 1909, amends like Ordinance No. 162 (Revised Edition) by substitutional words the effect of which is that no person shall sell to the prejudice of the purchaser any article of food or drug which is either not of the nature or not of the substance or not of the quality demanded by such purchaser; and also amends the Food and Drugs (Standard) Ordinance, 1905, by substitutional words that no person shall sell to the prejudice of the purchaser any article of food or drug which does not comply with the standard of purity fixed therefor under the amended Ordinance. (Then follow provisions as to penalties.)

Bankruptcy (No. 31).—The Bankruptcy Ordinance, 1909, amends like Ordinance, 1907, by substituting an official receiver appointed by the Governor for the receiver appointed by the Court.

Post Office (No. 32).—The Post Office Ordinance, 1909, is consolidated with like Ordinances Nos. 197 and 301 (Revised Edition), and amends the former by substituting the Convention of Rome, 1906, for the Convention of Washington of 1897. The insurance of parcels is to be deemed to be an insurance against loss, and not against damage due to faulty packing, and in the absence of fraud or wilful misbehaviour on their part officials are not to be personally or officially liable to legal proceedings in respect of loss to or delay in delivery of uninsured parcels or postal packets.

Wireless Telegraphy (No. 35).—The Wireless Telegraphy Ordinance, 1909, prohibits messages by wireless telegraphy from any merchant ship while that ship is in the territorial waters of the Colony otherwise than in

accordance with regulations made from time to time by the Governor and published in the *Royal Gazette*.

Mining Regulations (No. 37).—The Mines Regulation (Amendment) Ordinance, 1909, substitutes fresh regulations for owners of mines as to keeping plans of the mines, log of borings, and production to Inspector of Mines of such plans and logs, in lieu of the regulations provided by like Ordinance No. 13 of 1907.

7. THE WINDWARD ISLANDS.

(i) GRENADA.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—16.

Illiterate Persons Protection (No. 1).—By this Ordinance certain classes of documents of an important kind such as conveyances or purchases of land, leases and onerous contracts made or entered into by an "illiterate person"—that is, a person unable to write his name—must be officially attested; and before execution the official attestor must explain the document to the "illiterate," and is to refuse to attest unless the "illiterate" appears to understand the contents of it.

Company-Name (No. 2).—Such words as "King's," "Queen's," "Royal," "Crown," "Imperial," or words suggesting Royal or Government patronage are not to be used by a company as part of its name without licence from the Governor.

Criminal Law (No. 9).—Sentence of death is not to be pronounced or recorded against a "juvenile offender," but in lieu thereof the Court is to sentence the child or young person to be "detained" during his Majesty's pleasure in such places and under such conditions as the Governor may determine.

Rats (No. 11).—Rats are now more than suspected of spreading the plague. This Ordinance gives power to the Governor in Council to make regulations for their destruction, and that of other vermin, and for minimising their number both on shore and on vessels in the waters of the Colony.

Estate Duty (No. 12).—Estate duty is granted on the lines of the Imperial Act, and provision made for its collection.

Medical Practitioners and Dentists (No. 13).—This is an Ordinance—of a kind now become very common—for getting rid of the "unqualified practitioner" or quack by establishing registers of duly qualified medical practitioners and dentists. The requisite qualification as prescribed and a certificate for registration must be obtained. A list of persons on the register is to be published every year in the Government *Gazette*.

Bastardy (No. 14).—Where the magistrate dispenses with the prepayment of Court fees by a woman complainant, he is empowered to order the putative father to pay such fees.

Bank Holiday (No. 16).—The Governor in Council may from time to time by Proclamation in the *Gazette* appoint a special day to be observed as a Bank Holiday.

Minor Miscellaneous Acts.

Agriculture (No. 8).—A Board of Agriculture is constituted, with the Colonial Secretary as its President, for the purpose—mainly—of preparing an estimate of the probable expenditure of the Agricultural Department for the ensuing financial year.

Cocoa and Nutmegs.—No. 7 amends the law as to applications for licences for dealing in these articles.

Export Duties (No. 10) amended.

Schools.—No. 6 re-organises grammar schools and girls' high schools as Government schools of secondary education.

Supply (Nos. 5, 14).

(ii) ST. LUCIA.

[*Contributed by* Wallwyn P. B. Shepheard, Esq.]

Ordinances passed—12.[1]

Companies (No. 4).—The Companies Ordinance, 1869, Amendment Ordinance, 1909, repeals a like Ordinance of 1908 and amends the principal Ordinance of 1869 by prohibiting the registration of any company under a name containing the words "Empire," "Imperial," "King's," "Queen's," "Royal," "Crown," or other words suggesting Royal or Government patronage without the permission of the Governor in writing.

Guarantee Fund (Public Officers') (No. 6).—The Public Officers' Guarantee Fund Ordinance, 1909, establishes a Guarantee Fund consisting of contributions from public officers and interest accruing on the investments of the fund. The Governor is empowered to require persons in the public service to give security. Contributors to the fund are released from this requirement unless the security required exceeds £500. All permanent officials are to pay to the fund entrance fees on their appointment and monthly contributions of one-twelfth part of 1 per cent. of the amount, not exceeding £500, of the required security. Existing public officials are to contribute to the fund, but the fund is not to be liable for defaults of any

[1] Ordinances are passed by the Governor with the advice and consent of the Legislative Council of St. Lucia, and are numbered consecutively for the calendar year.

official committed before his first contribution to the fund. The amount of any default by accounting officers is to be certified by the Auditor of the Windward Islands and paid to the general revenue out of the fund. Such defaulters are to remain liable and amounts recovered from them are to be paid into the general revenue, which thereupon is to recoup the fund *pro tanto*. Provisions are made for the administration of the fund and the refund of contributions, subject to liabilities incurred, upon retirement from the public service or death of contributors.

Criminal Law (No. 8).—The Criminal Code Amendment Ordinance, 1909, is consolidated with the Criminal Code of the Colony, which it amends by providing that sentence of death is not to be pronounced against a child or young person, who is to be sentenced to detention during his Majesty's pleasure, and, being so sentenced, imprisoned accordingly.

Civil Procedure (No. 11).—By the Code of Civil Procedure Amendment Ordinance, 1909, appeals are to lie to his Majesty in Council, and such amendment is to be substituted as Art. 967 of the Code.

Plants Protection (No. 12).—The Plants Protection Ordinance, 1909, applies to growing plants, cuttings, buds and grafts, bulbs, roots, seeds and berries, and fruit and vegetables intended for propagation and not for consumption. Importation of plants likely to introduce plant disease may be prohibited by Proclamation, and the importation of all plants is subject to the provisions of the Ordinance.

(iii) ST. VINCENT.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—16.[1]

Marriage (No. 3).—The Marriage Ordinance, 1909, consolidates and amends the law relating to marriage. Marriage either past or future with a deceased wife's sister is not to be deemed void as a civil contract by reason only of such affinity provided that such a past marriage, annulled or in which during the life of one party the other has lawfully married, shall be void upon and after the day of its annulment or the marriage of one of the parties during the life of the other, and that no rights as to property accrued before this Ordinance are to be prejudicially affected nor any will be deemed revoked by any past marriage being made valid by the Ordinance. The Ordinance contains in fifty-six sections and several schedules of forms detailed provisions as to marriage officers both civil and religious, preliminaries to solemnisation of marriage, prohibition of marriage of persons in certain cases,

[1] Ordinances are passed by the Governor with the advice and consent of the Legislative Council of St. Vincent.

solemnisation of marriage, marriage *in articulo mortis*, and administration of the Marriage and Registration Law.

Registration of Births and Deaths (No. 4).—The Registration of Births and Deaths Ordinance, 1909, consists of fifty-nine sections and several schedules of forms. It is divided into the following parts:

Part I.—Central Administration under the Registrar-General.

Part II.—Registration Districts.

Part III.—Registration of Births and Deaths.

Part IV.—Returns, etc., and Certified Copies of Registers.

Part V.—Offences and Procedure.

Criminal Law (No. 7).—The Offences against the Person Amendment Ordinance, 1909, is consolidated with like Ordinances of 1878 and 1889, and is in effect similar to the foregoing St. Lucia Ordinance, No. 8, 1909.

Registration of Deeds (No. 8).—The Registry Ordinance, 1883, Amendment Ordinance, 1909, is consolidated with and amends the principal Ordinance in respect of the registration of documents (other than wills) when executed in any part of the British Dominions out of the Colony of St. Vincent by requiring them to be proved by declaration in writing of attesting witness as to due execution made before a notary or judge or Governor or mayor or chief magistrate of the place where such declaration is made. Any deeds, etc., not required by principal Ordinance to be registered may at the option of any party thereto be registered.

Companies (No. 13).—The Companies Act, 1874, Amending Ordinance, 1909, is consolidated with and amends the principal Act by prohibiting use of names implying Royal patronage similar in effect to the Ordinance No. 4, St. Lucia, above noted.

Agricultural Products (No. 16).—The Agricultural Products Protection Ordinance, 1909, is consolidated with and amends the principal Ordinance, 1906, by making the growth and ginning of cotton, its sale, etc., subject to the provisions contained in the Ordinance.

8. THE LEEWARD ISLANDS.

[*Contributed by* T. S. Sidney, Esq., *Attorney-General.*]

THE FEDERAL COLONY.

Acts passed—9.

Quarantine (No. 1).—An Act amending No. 5 of 1905, giving effect to recommendations of the recent Conference for the West Indies.

Marriages (No. 2).—Marriages may now be solemnised between the hours of 6 a.m. and 8 p.m.

Children's Charter (No. 3).—By this Act sentence of death shall not be pronounced on any person under the age of fifteen years.

Magistrates' Code of Procedure (No. 4).—The amendments in the

principal Act dealt with s. 91 in view of a recent judicial decision, and the repeal of ss. 132 and 133 dealing with magisterial returns.

Jury Laws (No. 5).—Owing to an unexpected judicial interpretation of the meaning of one of the sections of this Act, it was disallowed.

Supreme Court Library (No. 6).—Repealing the Act of 1878 constituting a Supreme Court Library.

Admission of Barristers (No. 7).—To amend the Supreme Court Act, 1880, by imposing a fee of £20 on admission to practice before the Supreme Court.

(i) ANTIGUA.

Number of Ordinances—5.

Porters and Watermen (No. 3).—This is an Ordinance for the regulation of porters and watermen and the licensing of lighters and boats plying about the Island.

Wakes (No. 4).—Wakes or gatherings of persons in respect of deceased persons and accompanied by noise and singing have made this Ordinance necessary. It prohibits such wakes being continued later than 11 o'clock at night, and gives special powers to the police.

Security by Newspapers (No. 5).—No newspaper is henceforth to be printed or published until a bond for £200 with sureties has been given to answer any penalty which may be imposed for printing or publishing a blasphemous or seditious or other libel. This is a useful safeguard against the licence of those *ephemeridæ* of the press that are born and die in a day.

Supply (No. 1).

Gun (No. 2).—Definition of, extended.

(ii) DOMINICA.

Number of Ordinances—5.

Security by Newspapers (No. 3).—This is an Ordinance analogous to No. 2 of Montserrat and No. 5 of Antigua, requiring a bond with sureties by newspapers to answer possible penalties for libel.

Medical Relief (No. 5).—The Ordinance of 1880 on the subject is amended.

Supply (Nos. 1, 2 and 4).

(iii) MONTSERRAT.

Number of Ordinances—5.

Newspaper Security (No. 2).—This is an Ordinance on the same lines as No. 5 of Antigua (*supra*) requiring a bond by newspapers to answer penalties for libel.

Public Roads.—No. 3 amends the Ordinance of 1907.
Supply (Nos. 1 and 5).

(iv) ST. CHRISTOPHER AND NEVIS.

Number of Ordinances—6.

Savings Bank (No. 2).—This Ordinance establishes a Savings Bank for the Presidency with the necessary regulations.

Security by Newspapers (No. 3).—This is legislation similar to that of Antigua, Montserrat, and Dominica.

Explosives (No. 4).—Strict regulations are made as to the landing, testing, and storing of explosives, petroleum in particular, which is given a wide definition.

Legislative Council (No. 5).—The duration of the Legislative Council is reduced to three years.

Supply (Nos. 1 and 6).

(v) THE VIRGIN ISLANDS.

Number of Ordinances—5.

Roads (No. 2).—A road tax is established and road wardens appointed for the maintenance of public highways.

Security by Newspapers (No. 3).—This Ordinance is similar to those already noticed.

Supply (Nos. 1 and 4).

XI. MEDITERRANEAN COLONIES.

1. GIBRALTAR.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Ordinances passed—9.

Merchant Shipping.—S. 50 of the Merchant Shipping Act, 1894, which relates to the detention of foreign ships, is made to apply to any ship which is unsafe by reason of the defective condition of her hull, equipments, or machinery; and the provision is to apply to any foreign ships in the port of Gibraltar whether they take in cargo there or not (No. 3).

The provisions of ss. 452, 454, and 455 of the Act of 1894 are also applied to foreign ships carrying grain cargoes while in the port of Gibraltar.

Wireless Telegraphy.—Wireless telegraphy on ships in the port of Gibraltar, whether British or foreign, must be worked in accordance with rules made by the Governor (No. 4).

Married Women.—A married woman having separate property is to be subject to the same liability for the maintenance of her parents as if she were a feme sole (No. 5).

Death Penalty.—Death sentences on young persons, under sixteen years, are abolished (No. 6).

Incest.—Punishments in the case of incest are provided for in accordance with the recent U.K. Act (No. 7).

Distress.—Protection is given to under-tenants in the case of distresses levied by landlords in respect of arrears of rent of the tenant (No. 8).

2. MALTA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Ordinances passed—10.

Criminal Law.—A number of amendments of the Criminal Law are made by No. 8.

Where a "contravention" is committed by a person who is under the care or authority of another, if it is the duty of that other person to prevent the contravention, and he could have done so with diligence, he also is liable to punishment.

Adultery is a criminal offence in Malta, but extenuating circumstances are now recognised. The term of imprisonment is not to exceed three months if the complaining husband has misconducted himself notoriously within the past five years, or if the husband and wife are judicially separated "by reason of the fault of the complaining consort."

A considerable number of the amendments are for the further protection of women and girls, and follow the recent legislation of this country.

Provision is made for the evidence of prisoners.

Of the other Ordinances, four are concerned with finance, and two are private Acts.

3. CYPRUS.

[*Contributed by* STANLEY FISHER, ESQ., *President of the District Court of Kyrenia.*]

1908.

Laws passed—10.

Death Penalty Amendment.—No. 2 abolishes the penalty of death in cases of offences against Arts. 59, 69 (offences of a mutinous or insurrectionary nature), 61 (setting fire to or destroying Government buildings or stores), and 163 (setting fire to buildings or ships) of the Ottoman Penal Code, and substitutes a penalty of hard labour for life or for a shorter term.

Village Obligations Amendment.—No. 5 amends the Village Obligations Law, 1901,[1] and makes better provision for ensuring that persons who are resident in or have a stake in a village shall contribute their fair share towards the cost of works undertaken for the benefit of the village generally. Steps must be taken to ascertain the view of the village as to any work proposed to be carried out under this Law, and provision is made, by means of an appeal to the District Commissioner, that the assessments, which are made in the first instance by the Mukhtar and Village Commission, are fair and reasonable. Unpaid assessments are ultimately recoverable under the Tithe and Tax Collection Law, 1882.

Platres: Public Health.—No. 6 provides for the constitution and regulation of a body to control and safeguard, during the summer months, the sanitation and public health of Platres, a village on the southern slope of Mount Troodos much resorted to in summer by visitors from other parts of Cyprus, and from Egypt.

Foreign Tribunal Evidence.—No. 7 makes provisions for taking evidence in Cyprus in civil and criminal cases (not being of a political character) pending in the Courts of other countries. The Supreme Court nominates the person before whom the evidence is to be taken, and the evidence will be sent by the Registrar of the Supreme Court to the Chief Secretary to Government for transmission through the Secretary of State to the Court requiring it.

Archiepiscopal Election.—No. 8 was passed to put an end to difficulties arising from a long-existing vacancy in the Archiepiscopal Throne of the Church of Cyprus. It provided machinery for holding an election, and having effected its object it ceased to be in force except in so far as rights, powers, and privileges arising from it are concerned.

Corporate Bodies (Immovable Property Registration).—No. 9 enables duly constituted non-ecclesiastical corporate bodies to hold and deal with immovable property as if they were individuals. An annual fee is payable in respect of property registered under this Law in lieu of the fee payable on devolution by inheritance in the case of property registered in the name of an individual.

Sunday Observance (Greek Orthodox).—No. 10 repeals and substantially re-enacts, with a small alteration as to hours, a similarly intituled Law passed in 1907.[2]

1909.

Laws passed—16.

Steam Engines (Fuel).—No. 3 continues Law 6 of 1906,[3] which was passed in the interest of forestry, in force for three years from July 1, 1909.

[1] Journal, N.S. vol iv. p. 358. [2] Journal, N.S. vol. ix. p. 532.
[3] Journal N S vol. viii. p. 429.

Death Penalty (Children) Amendment (No. 4).—"Children" are defined as persons under fourteen, and "young persons" as persons between fourteen and sixteen. Neither children nor young persons are to be sentenced to death, nor whatever capital offence they may commit are they to be liable to a greater punishment than detention for ten years.

Motor Car.—No. 5 provides for the better regulation of motor traffic by giving the High Commissioner in Council power to make regulations with regard to registration, licensing, closing of certain roads to motor traffic, speed, etc. The Law provides a penalty for infringement of the regulations not exceeding a fine of £10 for a first offence, and a fine of £25 or one month's imprisonment for a subsequent offence.

Vehicles and Traffic Regulation Amendment.—No. 6 amends the Vehicles and Traffic Law, 1907,[1] by cancelling the offence of loitering in a public street.

Game and Wild Birds Protection Amendment.—No. 7 amends the Game and Wild Birds Protection Law, 1906. The shooting of all game and wild birds between March 1 and August 12 is absolutely prohibited, and offenders are punishable by a fine not exceeding £5, forfeiture of licence, and prohibition from carrying a gun for twelve months after conviction. The High Commissioner in Council is empowered to reserve areas for the preservation of game for periods not exceeding two years, provided that no single area must exceed 50 square miles, nor must the aggregate of areas reserved in one district exceed one-third of the total area of the district. More drastic provision is also made for preventing the taking of the eggs of game and wild birds, and certain birds peculiar to Cyprus, eight in number, are protected all the year round.

Fish Preservation (No. 11).—This is the first Law of its kind passed in Cyprus. Its operation is confined to waters connected with Public Irrigation Works in the district of Famagusta. It provides penalties for punishing persons who fish in such waters.

Field Watchmen Amendment.—No. 14 substantially amends the Field Watchmen Law, 1896, by placing all field watchmen under the supervision of a member of the Cyprus Military Police specially appointed in each Nahieh for the purpose. This functionary's duties include also the prosecution of claims for damage done by trespassing flocks. Better provision is also made for assessing the contribution of villagers to the amount required for paying the wages of field watchmen.

Cruelty to Animals.—No. 15 repeals the Cruelty to Animals Law, 1890, much of which it re-enacts. It also increases the number of animals protected against cruelty, and gives power to the High Commissioner in Council to make regulations with a view to ensuring the humane treatment of animals while being embarked, disembarked, and while on a voyage, without, however, providing for any penalty for breach of the regulations.

[1] Journal, N.S. vol. ix. p. 533.

Fines inflicted under the provisions of this Law (subject to any reward, not exceeding one-half the fine, ordered by the Court to be paid to an informer) are to be paid to the Committee of the Cyprus Branch of the Royal Society for the Prevention of Cruelty to Animals to be expended in furtherance of their aims.

Malicious Injury to Property Amendment.—No. 16 amends the Malicious Injury to Property Law, 1894. The category of property to which the Law is applicable is extended, and provision is made for facilitating the settlement of claims under the Law by agreement between the person aggrieved and the village community affected so as to obviate the expense involved in a petition to the Court. Provision is also made that persons who fail to pay their share of compensation may be ordered to work on the village roads, and on refusal to do so may be imprisoned for a term not exceeding one month.

INDEX TO REVIEW OF LEGISLATION.

PAGE

ABATTOIRS, establishment of public (Western Australia) 400
Aborigines, protection of (New South Wales). *See also* Natives . . 377–378
Accountants, chartered, qualification of (Denmark) 311
——— registration of (Natal) 416
Administration: estates of (British Guiana) 466–467
——— ——— (Natal) 415
——— ——— Indian immigrants (Natal) 414
——— ——— intestates' (Gambia) 432
——— ——— ——— (East Africa) 438
Adulteration, food or drugs, of (Trinidad and Tobago) 475
Adultery, extenuating circumstances (Malta) 482
Agents, bribery of (Cape of Good Hope) 412
Agriculture: Board of, constituted (Grenada) 477
——— cattle. *See* Cattle.
——— Central Agricultural Society (Orange River Colony) . . . 418–419
——— cocoa and nutmegs, licence to deal in (Grenada) 477
——— co-operative agricultural societies (Transvaal) 426
——— cotton pests, protection against (Egypt) 312
——— creameries, registration of (Ontario) 456
——— drainage, aids to (Ontario) 452
——— encouragement of (Newfoundland) 459
——— exotic products, prohibition against importation (Natal) . . . 415
——— fertilisers and foodstuffs (Trinidad and Tobago) 472
——— fruit depôts (British Columbia) 447
——— land and agricultural loan fund (Orange River Colony) . . 420–421
——— ——— purchase (Western Australia) 401
——— milk, testing of (Dominion of Canada) 445
——— plant pests, prevention of spread of (Dominion of Canada) . . 444
——— potato disease, eradication of (Tasmania) 386
——— Rabbit Boards (Queensland) 380
——— rice, standard quality for (Papua) 403–404
——— rural industries, development of (U.K.) 343
——— sago reserves (Papua) 404
——— sale of produce, licence (Trinidad and Tobago) 473
——— sugar, certificates, sale of land under lien (Barbados) . . . 464
——— weeds, noxious, eradication (Orange River Colony) 418
——— ——— ——— ——— (Transvaal) 426
——— ——— ——— prevention of spread of (U.K., I.) . . . 349
——— ——— ——— the water hyacinth (Ceylon) 358
Aliens, expulsion (Mauritius) 371

PAGE

Ambulance service (U.K.) 350
America, United States of, Legislation of 333–339
Animals: bees, importation of, prohibited (Natal) 415
——— ——— ——— ——— (Transvaal) 424
——— bulls running at large (Ontario) 454
——— carrion crows, killing of (British Guiana) 468
——— cruelty to (Uganda) 439
——— ——— extension of protection (Cyprus) 484–485
——— ——— liability of master (South Australia) 386
——— diseases, prevention of infection (Gambia) 432
——— dogs (Hong Kong) 363
——— ——— importation of diseased (Jamaica) 471
——— ——— liability of owner (Bermuda) 461
——— exotic, power to prohibit introduction (Orange River Colony) . 417–418
——— fish, preservation (Cyprus). *See also* Fish and Fishery . . . 484
——— horses, breeding, inspection of fitness (Fiji) 410
——— importation of diseased (British Guiana) 469–470
——— liability of persons keeping (Bermuda) 461
——— ——— ——— (Germany) 327
——— ostriches, regulation of farmers of (Uganda) 439
——— penguins, killing of, made unlawful (Falkland Islands) . . . 441
——— rabbits (Queensland) 380
——— ——— (Western Australia) 400
——— rats, destruction of (Grenada) 476
——— ——— premium for killing (Barbados) 464
——— sheep dipping after shearing (Victoria) 392
——— ——— scab in (Orange River Colony) 420
——— stallions not to be at large (Bermuda) 460
——— Veterinary College (Ontario) 457
——— ——— surgeons (British Guiana) 467–468
——— wild animals in captivity (U.K., S.) 348
——— ——— protection of (Natal) 416
——— wild birds, permit to take (Papua) 403
——— ——— protection (Cyprus) 484
Annuities, Government, sale of (Dominion of Canada) 443
——— redemption of (Western Australia) 401
Appeal: criminal (Papua) 402–403
——— Privy Council, to (Ceylon) 360
——— ——— ——— (Falkland Islands) 441
——— ——— ——— (St. Lucia) 478
Arbitration: committees of, appointment by Board of Trade (Newfoundland) . 458
——— consolidation of law (Ontario) 453
——— international (Denmark) 311
Architects, registration of (Transvaal) 431
Arms: firearms, "gun" defined (Antigua) 480
——— ——— licence for (Trinidad and Tobago) 473
——— permit to bear (Fiji) 410
Army: amendment of law (British India) 354
——— Army Council, transfer of powers to (U.K.) 340
——— compulsory military service (New Zealand) 407
——— King's African Rifles (Somaliland) 440

PAGE

Army: Territorials Volunteer Act (British India) 354
——— Volunteers (Barbados). 465
Assurance companies. *See* Insurance.
Asylums, lunatics for (Bengal) 355
Attorneys, Crown (Ontario) 454
Audit, reference to Treasury Board (Ontario) 451
Australia, Commonwealth of, Legislation of 373–374

BAHAMAS, Legislation of 362–363
Ballot, municipal councils (Cape of Good Hope) 412
Banishment (Malay States) 366
——— (Mauritius) 370
Bankruptcy: agents of foreign firms (Mauritius) 370–371
——— new Act (British India) 352
——— official receiver, appointment by Governor (Trinidad and Tobago) . 475
Banks: cheque, negligence of drawer (Tasmania) 388
——— emission banks, regulation of (Sweden) 332
——— filing charter or certificate of incorporation (Bermuda) . . . 460
——— holiday. *See* Holidays.
Barbados, Legislation of 463–465
Barbers' shops, inspection of (U.S.) 337
Barristers: admission to Bar (Fiji) 408–409
——— ——— fee on (Leeward Islands) 480
——— amendment of law (Quebec) 458
——— King's Counsel, limit on creation of (Manitoba) 449–450
——— women (Newfoundland) 459
Bastardy, prepayment of court fees (Grenada) 477
Bees, importation of, prohibited (Natal) 415
——— ——— ——— (Transvaal) 424
Bermudas, Legislation of 460–461
Betting. *See* Gambling.
Bills of exchange: cheque, negligence of drawer, protection of banker (Tasmania) 388
——— ——— dishonour, simplification of protests (Germany) . . . 327
——— ——— uniformity of law (Commonwealth of Australia) . . . 374
Bills of lading, exemption of shipowner for negligence (Dominion of Canada) . 445
Bills of sale (East Africa) 436
Births, registration of (St. Vincent) 479
Bonds, surety, renunciations by women (Natal) 415
Boundaries: Crown lands, erection of landmarks (Ceylon) 358
——— occupation, to be based on (Burma) 357
Bounties on steel, lead, and crude petroleum (Dominion of Canada) . . 445
British Columbia, Legislation of 446–447
British Guiana, Legislation of 465–470
British Honduras, Legislation of 470–471
British India, Legislation of 352–357
Bulls running at large (Ontario) 454
Bush fires (British Columbia) 447

CANADA, Dominion of, Legislation of 442–446
Cape of Good Hope, Legislation of 411–413

PAGE
Carriage of goods, sea, by (Western Australia) 400
——— ——— detention of goods, unpaid freight (Cape of Good Hope) . 412
——— ——— exemption of shipowners from liability (Dominion of Canada) 445
Carrion crows, killing of (British Guiana) 468
Cattle: breeding, fitness, inspection (Fiji) 410
——— contagious diseases (Tasmania) 389
——— fertilisers and foodstuffs (Trinidad and Tobago) 472
——— tick-infested, cleansing (Cape of Good Hope) 413
Cemeteries, provision of (Gold Coast) 433
Census, taking of (Bahamas) 462–463
Ceylon, Legislation of 358–360
Chander. *See* Opium.
Charities: consolidation of law (New Zealand) 406
——— mortmain, registration of trustees (Uganda) 439
Chartered accountants, qualification of (Denmark) 311–312
Cheque. *See* Bills of Exchange.
Chicle, export duty on (British Honduras) 470
Children and young persons: "child," definition of (Falkland Islands) . . 441
——— ——— ——— contracts by infants, relief (Victoria) . . . 397
——— ——— ——— cotton-spinning factories, employment in (Egypt) 313–314
——— ——— ——— health of, examination (U.S.) 337
——— ——— ——— illegitimate, inspection of homes (South Australia) 385
——— ——— ——— inspection of infant children (Transvaal) . . 427
——— ——— ——— intoxicating liquors, prohibition of sale to (U.S.) 336–337
——— ——— ——— lives, better protection of (Transvaal) . . 426–427
——— ——— ——— offences by, detention (British Guiana) . . 468
——— ——— ——— property (Mauritius) 370
——— ——— ——— ——— mortgage, erasure of inscription on sale (Mauritius) 368
——— ——— ——— protection of (British Guiana) 468
——— ——— ——— ——— (Cape of Good Hope) 413
——— ——— ——— ——— (Fiji) 409
——— ——— ——— sentence of death not to be passed on (British Honduras) 471
——— ——— ——— ——— ——— ——— (Cyprus) . . 483
——— ——— ——— ——— ——— ——— (East Africa) . . 437
——— ——— ——— ——— ——— ——— (Falkland Islands) . 441
——— ——— ——— ——— ——— ——— (Gambia) . . 432
——— ——— ——— ——— ——— ——— (Gibraltar) . . 482
——— ——— ——— ——— ——— ——— (Gold Coast) . . 433
——— ——— ——— ——— ——— ——— (Grenada) . . 476
——— ——— ——— ——— ——— ——— (Hong Kong) . . 362
——— ——— ——— ——— ——— ——— (Leeward Islands) . 479
——— ——— ——— ——— ——— ——— (Mauritius) . . 369
——— ——— ——— ——— ——— ——— (St. Lucia) . . 478
——— ——— ——— ——— ——— ——— (Seychelles) . . 372
——— ——— ——— ——— ——— ——— (Uganda) . . 439
——— ——— ——— State (South Australia) 385

PAGE

Children and young persons: tobacco, sale of, to, punishment of (Ceylon) . 360
——— ——— ——— ——— use of, by minors prohibited (U.S.). *See also* Tobacco 335
——— ——— ——— vagrant, detention of (Transvaal) 428
——— ——— ——— "young person" defined (Falkland Islands) . 441
Chinese secret societies, supervision (Straits Settlements) 364
Christian Mission, incorporation of (Barbados) 464
Church Union (Natal) 416
Cigarettes. *See* Tobacco.
Cinematographs: licensing of premises (Ontario) 456
——— ——— ——— ——— (U.K.) 342
Clubs, liquor in (British Columbia) 446–447
Coal mines. *See* Mines.
Cocoa and nutmegs, licence to deal in (Grenada) 477
Coins. *See* Currency.
Cold storage: Government guarantee (Newfoundland) 460
Collective punishments (East Africa) 436
——— ——— (Nyasaland). 440
——— ——— (Uganda) 438
Combines, investigation (Dominion of Canada) 442
Commercial law: stocks and shares, transactions in authorised exchanges (Egypt) 312–313
——— ——— ——— unfair competition in trade, injunction (Germany) . 327–328
Communal reserves (Cape of Good Hope) 412–413
Companies: clerical errors in, incorporating letters patent (Quebec) . . 458
——— consolidation of law (Transvaal). 428–429
——— co-operative societies, exemption from law of (Orange River Colony) . 422
——— emission banks, for promotion of (Sweden) 332
——— fees on incorporation, scale of (Queensland) 380
——— foreign (Manitoba) 449
——— free miners' licence to (British Columbia) 447
——— incorporation, conditions (Ontario) 455
——— land, power to deal with (Cyprus) 483
——— name of, assumption of "Empire," "Imperial," "Royal" "King," etc.— (Fiji) . . . 409
——— ——— ——— ——— ——— ——— (Grenada) . . 476
——— ——— ——— ——— ——— ——— (St. Lucia) . . 477
——— ——— ——— ——— ——— ——— (St. Vincent) . . 479
——— ——— ——— ——— ——— ——— (Seychelles) . . 373
——— ——— ——— ——— ——— ——— (Transvaal) . . 430
——— ——— ——— ——— ——— ——— (Victoria) . . 399
——— shares, denomination of (Straits Settlements) 363
Concessions, waterfalls, of, when permitted (Norway) 331
Consent, age of, sexual intercourse (Natal) 414
Constitution: amendment of (British Guiana) 469
——— ——— (Queensland) 379–380
——— Legislative Council. *See* Parliament.
——— reference of questions (Ontario) 454
Consuls, judicial power (France) 322
Contracts: infants, by, relief (Victoria) 397
——— service, of (Papua) 404

PAGE
Convention, commercial, with France (Dominion of Canada) 443
Conveyancing and laws of property (Bermuda) 460
Co-operative societies, exemption from law of companies (Orange River Colony) 422
Coroner: consolidation of law (Bermuda) 461
——— inquests (Transvaal) 424
——— ——— conduct of (Tasmania) 388
Corruption, bribing of agents (Cape of Good Hope) 412
Cotton pests, protection against (Egypt) 312
Courts. *See* Judicature.
Creditors' relief (Ontario) 454
Criminal Law: abetment of crimes (Ceylon) 359
——— accused persons, detention pending trial (U.K., S.) 348
——— ——— ——— evidence by (Jersey) 350–351
——— ——— ——— ——— (Mauritius) 370
——— adoption of foreign criminal law (Perak) 367
——— adultery, extenuating circumstances (Malta) 482
——— appeal (France) 320–321
——— banishment (Malay States) 366
——— betting—"common betting place" (Dominion of Canada) . . . 443
——— blasphemy or obscenity, indictment need not set out (New South Wales) 377
——— collective punishments (East Africa) 436
——— ——— ——— (Nyasaland) 440
——— ——— ——— (Uganda) 438
——— criminal tribes, proceedings against (Bombay) 355
——— cruelty to animals (Uganda) 439
——— ——— ——— extension of protection (Cyprus) . . . 484–485
——— ——— ——— liability of master (South Australia) . . . 386
——— death penalty, abolition of, in certain cases (Cyprus) 482
——— defying foreign flag (Norway) 331
——— deportation (East Africa) 438
——— extradition (France) 321–322
——— ——— (Hong Kong) 363
——— fine, district, on (East Africa) 436
——— ——— part payment, reduction of imprisonment (Cape of Good Hope) 412
——— gambling, imprisonment for (California) 335
——— habitual criminals, preventive detention (British Guiana) . . . 469
——— ——— ——— trial of (Egypt) 313
——— incest, punishment of (Gibraltar) 482
——— ——— ——— (Guernsey) 351
——— indecency (Transvaal) 425
——— irrigation offences (Egypt) 314
——— larceny (Hong Kong) 361
——— malicious damage, property, to (Cyprus) 485
——— ——— ——— protection of railways (Hong Kong) . . . 361
——— marine policies, gambling on (U.K.) 346–347
——— mob-violence, prevention of (U.S.) 338
——— motor-car drivers, driving on after accident without giving name (Dominion of Canada) 443

PAGE

Criminal Law: motor-car, theft of (Dominion of Canada) 443
——— neutrality, offences against (Norway) 330–331
——— "night riders," punishment of (U.S.) 338
——— nuisance, noisy or offensive trades (Hong Kong) 361
——— penal code, amendment (Mauritius) 370
——— perjury, fine for (Hong Kong) 361
——— person, offences against the (St. Vincent) 479
——— personation, punishment for (Ontario) 451
——— prisons. *See* Prisons.
——— probation of offenders (British Guiana) 468
——— ——— ——— (Manitoba) 450
——— procedure (Punjab) 356
——— publishing treasonable, blasphemous, or indecent matter (Bermuda) . 461
——— "ragging" or "hazing" students (U.S.) 339
——— "Royal mercy," exercise by Governor (Newfoundland) . . . 459
——— sentence of death, abolition of, on young persons (British Guiana) . 468
——— ——— ——— ——— ——— ——— (British Honduras) . 471
——— ——— ——— ——— ——— ——— (Cyprus) . . . 483
——— ——— ——— ——— ——— ——— (Falkland Islands) . 441
——— ——— ——— ——— ——— ——— (Fiji) . . . 409
——— ——— ——— ——— ——— ——— (Gibraltar) . . 482
——— ——— ——— ——— ——— ——— (Gold Coast) . . 433
——— ——— ——— ——— ——— ——— (Grenada) . . 476
——— ——— ——— ——— ——— ——— (Hong Kong) . . 362
——— ——— ——— ——— ——— ——— (Leeward Islands) . 479
——— ——— ——— ——— ——— ——— (Mauritius) . . 369
——— ——— ——— ——— ——— ——— (St. Lucia) . . 478
——— ——— ——— ——— ——— ——— (Seychelles) . . 372
——— ——— ——— ——— ——— ——— (Uganda) . . 439
——— sexual intercourse, age of consent (Natal) 414
——— tobacco, sale of (Gambia) 432
——— ——— ——— to juveniles (Ceylon) 360
——— vagrants, arrest of (Uganda) 438–439
——— ——— prison farms for (Jamaica) 471
——— whipping (British India) 353–354
——— ——— (Hong Kong) 361
——— ——— boys, for (Natal) 415
——— women and girls, protection of (Hong Kong) 362
——— ——— ——— ——— (Malta) 482
——— ——— ——— ——— traffic in (Fiji) 410
——— young persons, offences by (British Guiana) 468
Crown attorneys (Ontario) 454
Cruelty to animals. *See* Animals.
Currency: coins, defaced (Mauritius) 368
——— ——— legal tender (Commonwealth of Australia) 373
——— denominations of money fixed (Dominion of Canada) 443
——— five rupee note (British India) 352
Customs. *See* Taxation.
Cycles: duty on (Mauritius) 368
——— registration (Victoria) 397–398
Cyprus, Legislation of. 482–485

PAGE
Dairies, registration of (Ontario) 456
Death: duties. *See* Taxation.
——— penalty, abolition of, in certain cases (Cyprus) 482
——— sentence, abolition of, in case of young persons. *See* Children and Young Persons *and* Criminal Law.
Deaths, registration of (St. Vincent) 479
Debtors, fraudulent (Ontario) 454
Deceased wife's sister, marriage with, sanctioned (Falkland Islands) . . 441
——— ——— ——— ——— ——— (Guernsey) 351
Defamation: blasphemy or obscenity, indictment need not set out (New South Wales) 377
——— consolidation of law (Ontario) 453
——— slander, words imputing adultery, unchastity, or drunkenness (Bermuda) 461
Defence: compulsory military service (New Zealand) 407
Denmark, Legislation of 311–312
Dentists: amendment of law (Quebec) 458
——— qualification (Transvaal) 424
——— regulation of (New South Wales) 378
Deportation (East Africa) 438
Designs, protection of (Denmark) 311
Disputes, labour. *See* Labour.
Distress: family property (France) 318–320
——— landlord and tenant. *See* Landlord and Tenant.
——— levying, costs of (Ontario) 454
Divorce: agreement for (Norway) 329
——— grounds for (Norway) 329–330
——— judicial separation (France) 322
Docks, dry, Government subsidy (Dominion of Canada) 443
Dogs (Hong Kong) 363
——— importation, disease (Jamaica) 471
——— liability of owner (Bermuda) 461
Dominica, Legislation of 480
Drainage, aids for (Ontario) 452
Drugs and Druggists: adulteration (Trinidad and Tobago) 475
——— ——— amendment of law (Ontario) 455
——— ——— consolidation of law of drugs (Bengal) 356
——— ——— examination (Newfoundland) 458
——— ——— licence to sell medicines and poisons (Norway) . . . 331
——— ——— opium. *See* Opium.
——— ——— poisons, exemption of certain preparations (Victoria) . . 399
——— ——— ——— importation for scientific purposes (Somaliland) . 440
——— ——— qualification (Transvaal) 424

East Africa, Legislation of 436–438
Ecclesiastical Law: Archbishop, election of (Cyprus) 483
——— Christian Mission, incorporation of (Barbados) 464
——— Church Union (Natal) 416
——— property, Presbyterian Church (Queensland) 480
Education: amendment (Transvaal) 431
——— college for secondary (Trinidad and Tobago) 473

PAGE

Education: compulsory scheme of (Falkland Islands) 441–442
——— consolidation of law (Ontario) 456–457
——— elementary (Jamaica) 471
——— ethical teaching in schools (U.S.) 338
——— medical treatment, recovery of expenses (U.K.) . . . 342
——— public (Western Australia) 400–401
——— ——— schools (Manitoba) 450
——— rates, power to levy (Straits Settlements) 363–364
——— schools: grammar schools and girls' high schools (Grenada) . 477
——— ——— inspection of premises (U.S.) 337
——— secondary (U.K.) 342
——— truancy (Ontario) 457
——— University, incorporation and endowment of (Queensland) . 382
Egypt, Legislation of 312–317
Elections: Archbishop, of (Cyprus) 483
——— councillors, of (Transvaal) 427
——— personation, punishment for (Ontario) 451
——— voting by post (Commonwealth of Australia) 373
Electric lighting: control of (Mauritius) 369
——— ——— facilitation of (U.K.) 342–343
Embankment, impressment of labour for repair of (Burma) . . . 357
Employment. *See* Labour.
——— brokers, regulation of (Western Australia) 401
Encumbered estates (Bengal) 355
Epidemics, special measures (British Guiana). *See also* Health . . 466
Escheat: consolidation of law (Ontario) 454–455
——— power of Crown to make grant of escheated property (Dominion of Canada) 443
Estate duty. *See* Taxation.
Eugenics, progress of (U.S.). *See also* Health 337
Evidence: commission, on, certificate (Hong Kong) 360–361
——— consolidation of law (Ontario) 454
——— Indian law of, adopted (Uganda). 439
——— shorthand notes (Ontario) 452
——— sparks from locomotives, presumption of negligence (Manitoba) . 449
Execution, consolidation of law (Ontario) 454
"Expert" officials of Court (Egypt) 312
Explosives: petroleum (Straits Settlements) 365
——— storing of (St. Christopher and Nevis) 481
Extradition: Treaty with Great Britain (France) 321–322

Factory: child labour in cotton spinning (Egypt) 313–314
——— inspection of (Isle of Man) 350
——— regulation of (New South Wales) 379
——— women's night work in (Sweden) 332
Falkland Islands, Legislation of 441–442
Family property, levying distraint on (France) 318
Federated Malay States, Legislation of 366–368
Fencing: cost of (Transvaal) 428
——— damage by (Cape of Good Hope) 411
——— loans for (Cape of Good Hope) 413

PAGE

Ferries (Ontario) 455
Fertilisers and foodstuffs, warranty on sale of (Trinidad and Tobago) . . 472
Field watchmen, supervision of (Cyprus) 484
Fiji, Legislation of 408–411
Finance: currency. *See* Currency.
——— revenue, collection of (Ontario) 451
——— supply (Antigua) 481
——— ——— (Bahamas) 462
——— ——— (Bermuda) 461
——— ——— (Commonwealth of Australia) 373
——— ——— (Dominica) 481
——— ——— (Egypt) 314
——— ——— (Grenada) 477
——— ——— (Malta) 482
——— ——— (Manitoba) 451
——— ——— (Natal) 416
——— ——— (New South Wales) 374
——— ——— (New Zealand) 405, 408
——— ——— (Orange River Colony) 423
——— ——— (Papua) 401
——— ——— (Queensland) 382
——— ——— (St. Christopher and Nevis) 481
——— ——— (Tasmania) 389
——— ——— (U.K.) 343
——— ——— (Virgin Islands) 481
Fire: brigades (New South Wales) 376
——— ——— (Western Australia) 400
——— escapes in hotel (Ontario) 452
——— sparks from locomotives, presumption of negligence (Manitoba) . 449
Firearms, licence to carry (Trinidad and Tobago). *See also* Arms . . . 473
Fish and Fisheries: explosives, prohibition of (Burma) 357
——— ——— foreign fishers, protection against (U.K.) . . . 343–344
——— ——— inspectors of (South Australia) 384
——— ——— methods of fishing (Straits Settlements) 365
——— ——— preservation of (Cyprus) 484
Flooding, damage by (Ontario) 454
Foreign companies (Manitoba) 449
Foreign vessels, detention of (Gibraltar) 481
Forestry. *See* Woods and Forests.
France, Legislation of 317–323
Franchise, electorate, improving character of (U.S.) 333–334
Friendly societies: consolidation of law (New Zealand) 406
——— ——— insurance, legislation (U.K.) 340
Fruit depôts (British Columbia) 447

GAMBIA, Legislation of 432
——— Protectorate, grants of land in 432
Gambling: betting, "common betting place" (Dominion of Canada) . . 443
——— ——— prohibition on certain days (Transvaal) 430
——— "P.P.I." policies of marine insurance, on (U.K.) . . . 346–347
——— prevention of (U.S.) 335

PAGE

Gambling: prevention of, under guise of building or loan societies (Natal) . 416
——— restrictions on (Transvaal) 430
——— totalisator, licence to use (Transvaal) 430
Game: consolidation of law (Cape of Good Hope) 412
——— licence, number of animals which may be killed (Somaliland) . . 440
——— preservation (Manitoba) 449
——— protection of (British Columbia) 447
——— ——— (Cyprus) 484
——— ——— (East Africa) 438
Germany, Legislation of 323–329
Gibraltar, Legislation of 481–482
Gold: dealing in (Gold Coast) 432
——— duty (New Zealand) 408
——— purchase of (Papua) 403
——— ——— (Tasmania) 389
Gold Coast, Legislation of 432–433
Government: seat of (New South Wales). *See also* Parliament *and* Public Service 376
Grenada, Legislation of 476–477
Guarantee company, bond of (Ontario) 455
Guernsey, Legislation of 351
"Gun," definition of (Antigua) 480

HABEAS corpus, consolidation of law (Ontario) 454
Hackney carriages, loitering (Cyprus) 484
——— ——— registration of (Bermuda) 461
Harbour dues (Mauritius) 370
Hawkers' and pedlars' licences (Papua) 404
"Hazing" or "ragging" students, suppression of (U.S.) 339
Health: abattoirs, public, establishment of (Western Australia) . . . 400
——— adulteration of food and drugs (Trinidad and Tobago) . . . 475
——— ambulance service (U.K.) 350
——— barbers' shops, inspection of (U.S.) 337
——— board to regulate (Cyprus) 483
——— children, school, examination of (U.S.) 337
——— coal mines (Victoria) 395
——— creameries, registration of (Ontario) 456
——— diseases, communicable, prevention of (U.S.) 337
——— ——— epidemic, special measures (British Guiana) . . . 466
——— ——— notification of (Seychelles) 372
——— ——— ——— medical fee (South Australia) . . . 385
——— ——— prevention of (Ontario) 456
——— exhumation and re-interment of bodies (Hong Kong) 362
——— hospitals, inspection of (British Columbia) 447
——— ——— support of patients (Manitoba) 449
——— hotels, inspection of (U.S.) 337
——— housing and town planning (U.K.) 344–345
——— inebriates, charge of (New South Wales) 374–375
——— leprosy, notification (Seychelles) 372
——— matches, white phosphorus, prohibited (Isle of Man) 350
——— medical relief (Dominica) 480

PAGE

Health: oculists, regulation of (Manitoba) 450
——— quarantine (Barbados) 465
——— ——— (British Guiana) 466
——— ——— (Leeward Islands) 479
——— ——— (Mauritius) 370
——— resorts in Ireland, rate for advertising (U.K., I.) 349
——— sanitary rates (South Australia) 385
——— school premises, inspection of (U.S.) 337
——— shops, sanitation of (U.S.) 338
——— sleeping sickness (East Africa) 438
——— tuberculous patients, sanatorium for (U.S.) 337
——— vaccination (Burma) 356–357
——— workmen's dwellings (Queensland) 381–382
High Commissioner, power to appoint (Commonwealth of Australia) . . 374
Highways. *See* Roads.
Holidays: bank holidays, power to proclaim (Grenada) 477
Homesteads, protection of (Quebec) 457
Hong Kong, Legislation of 360–362
Horse-breeding, fitness (Fiji) 410
Horse races, restriction on (New Zealand) 407
——— ——— (Transvaal) 430
Hospitals: consolidation of law (New Zealand) 406
——— inspection of (British Columbia) 447
——— support of patients (Manitoba) 449
Housing and Town Planning (U.K.) 344–345
Human Leopard and Alligator Societies, suppression of (Sierra Leone) . . 434
Hurricane relief (Bermuda) 461
Husband and wife: separate property, maintenance of parents (Gibraltar) . 482
——— ——— separation, summary jurisdiction (Tasmania) . . 387–388

Illiterate persons, protection (Grenada) 476
Immigration: criminals, of (Tasmania) 388
——— Indian coolies (Ceylon) 358–359
——— labour, protection (Bermuda) 461
——— paupers (Barbados) 465
——— ——— (Gold Coast) 433
——— ——— (Sierra Leone) 434
——— plantations where death rate high (Jamaica) 472–473
——— prohibited immigrants (Dominion of Canada) 443–444
——— undersirables, exclusion of (Fiji) 410
Imprisonment for debt, payment, release (Natal) 415
Incest, punishment of (Gibraltar) 482
——— ——— (Guernsey) 351
India, British, Legislation of 352–357
Indian coolies (Ceylon). *See also* Immigration 358
Indian immigrants, duties on estates of (Natal) 414
Industrial legislation: bounties on steel and crude petroleum (Dominion of Canada) 445
——— ——— factories (Egypt) *See also* Factories 313–314
——— ——— labour disputes (Dominion of Canada) 445
——— ——— ——— ——— (New South Wales) 378

PAGE

Industrial legislation: labour exchanges (U.K.). *See also* Labour . . . 345
——— ——— trade boards (U.K.) 345–346
——— ——— woollen manufacture, encouragement of (Newfoundland) . 459
Industrial schools: moral degenerates, detention of, in (New Zealand) . . 406
——— ——— vagrant children sent to (Transvaal) 425
Inebriates, charge of (New South Wales) 374–375
——— committal to home (New Zealand) 407
——— contracts by (Victoria) 397
Infants. *See* Children and Young Persons.
Inflammable oils: petroleum (British Guiana) 466
——— ——— rules as to (South Australia) 385–386
Insolvency. *See* Bankruptcy.
Insurance: business of, State superintendence (Dominion of Canada) . . 444
——— company, transfer of shares (Ontario) 452
——— contracts (Germany) 324–325
——— fire, adoption of English law (British Guiana) 466
——— life, adoption of English law (British Guiana) 466
——— ——— companies (Hong Kong) 363
——— ——— ——— consolidation of provisions (U.K.) . . 340–342
——— marine, English Marine Insurance Act, 1906, adopted (Commonwealth of Australia) 373
——— ——— "P.P.I." policies, gambling on (U.K.) 346–347
——— parcels, of, by Post Office (Trinidad and Tobago) 475
——— sailors, of (Denmark) 312
——— sick, of (Norway) 331
International arbitration (Denmark) 311
——— law: extradition. *See* Extradition.
Interpretation (Eastern Bengal and Assam) 356
——— (Malay States) 366
Intestates' estates, administration of (East Africa) 438
——— ——— ——— (Gambia) 432
Intoxicating liquors: amendment of law (Transvaal) 431
——— ——— ——— ——— (Western Australia) 400
——— ——— consolidation of law (Bengal) 356
——— ——— distilling of spirits (Southern Nigeria) 435
——— ——— duties on (Hong Kong) 361
——— ——— licences, conditions, tavern accommodation (Ontario) . . 456
——— ——— ——— grant of, by municipal councils (Cape of Good Hope) 412
——— ——— ——— variety of (East Africa) 437
——— ——— local option (Manitoba) 450
——— ——— natives, prevention of sale to (Gold Coast) 433
——— ——— possession of, by coloured person (Orange River Colony) . 416
——— ——— prohibition of (U.S.) 336–337
——— ——— ——— persons prohibited from being served (Fiji) . . 410
——— ——— sale of (Barbados) 463–464
Introduction to Legislation 308–310
Ireland (U.K., I) 349
——— health resorts, rate for advertising (U.K., I.) 349
——— land purchase (U.K., I.) 348–349
——— weeds, noxious, prevention of spread of (U.K., I.) 349

PAGE

Irrigation: amendment (Dominion of Canada) 445
——— offences (Egypt) 314
——— settlements (Orange River Colony) 419–420
——— storage of water by riparian owner (Cape of Good Hope) . . . 413
——— use of public stream for (Transvaal) 424
Isle of Man, Legislation of 350

JAMAICA, Legislation of 471
Jersey, Legislation of 350–351
Judicature: appeals, criminal (Papua) 402–403
——— ——— Privy Council, to (Ceylon) 360
——— ——— ——— ——— (Falkland Islands) 441
——— ——— ——— ——— (St. Lucia) 478
——— consuls, judicial powers of (France) 322
——— Courts: General Sessions, jurisdiction (Ontario) 453
——— ——— German, amendment of procedure (Germany) . . . 328
——— ——— inferior, procedure of (New Zealand) 406
——— ——— Mehkemehs (Egypt) 315–316
——— ——— non-partisan (U.S.) 334
——— ——— Supreme, constitution of (Jamaica) 471
——— ——— Surrogates' (Ontario) 453
——— "expert" officials (Egypt) 312
——— judge: charges to jury to be in writing (U.S.) 334
——— ——— delivery of judgment notwithstanding resignation (Ontario) 452–453
——— ——— interested, retiring from Bench (Tasmania) 389
——— ——— precedence of judges (Ceylon) 358
——— ——— transfer of judicial power (Egypt) 314
——— juries: exemption (Fiji) 409
——— ——— opinions formed from newspapers, non-disqualification (U.S.) 334
——— ——— qualifications (Bermuda) 460
——— ——— ——— (Ontario) 453
——— magistrates: appointment of (New South Wales) 377
——— ——— jurisdiction (Queensland) 380
——— ——— ——— (Trinidad and Tobago) 473
——— ——— ——— extension of (Mauritius) 369
——— ——— practising as barristers or solicitors (Ontario) . . . 454
——— ——— procedure (Leeward Islands) 479–480
——— ——— ——— (New Zealand) 407
——— ——— ——— (Orange River Colony) 416
——— oaths, swearing with uplifted hands (U.K.) 347
——— procedure: civil: amendment (Jersey) 350
——— ——— ——— ——— (Papua) 402–403
——— ——— ——— appeals to his Majesty in Council (St. Lucia). *See supra*, Appeals 478
——— ——— ——— consolidation (Straits Settlements) . . . 365
——— ——— ——— evidence, for obtaining (Hong Kong) . . . 360
——— ——— ——— judgment, enforcing outside jurisdiction (Northern Nigeria) 435
——— ——— criminal: accused persons may give evidence (Jersey) 350–351

PAGE

Judicature: procedure: criminal: blasphemy or obscenity, indictment need not set out (New South Wales) 377
——— ——— ——— exemption of person under sixteen from death sentence (Trinidad and Tobago) . . . 475
——— ——— ——— review, power of (Punjab) 356
——— shorthand notes (Ontario) 452
——— trial, Labuan assizes (Straits Settlements) 364–365
Justice of the peace. *See* Judicature, magistrates.

Labour: absconding employees (British Guiana) 469
——— children in cotton factories (Egypt) 313–314
——— coal mines, in (Victoria) 393–396
——— code (Seychelles) 372
——— colonies (Cape of Good Hope) 411–412
——— contracts (Papua) 404
——— department, constitution of (Transvaal) 426–427
——— disputes (Commonwealth of Australia) 374
——— ——— (New South Wales) 378
——— emigration and (Bermuda) 461
——— ——— (Madras) 355
——— employment brokers, regulation of (Western Australia) . . . 401
——— impressment of, for river embankment (Burma) 357
——— labour exchanges (U.K.) 345–346
——— native: consolidation of law (Nyasaland) 440
——— ——— recruiting (Seychelles). *See also* Natives 372
——— seamen, compensation for injuries (Commonwealth of Australia) . 374
——— statute (Ontario) 455
——— trade boards (U.K.) 346
——— wages: garnishing of (Ontario) 453
——— ——— woodman, of (Ontario) 453
——— ——— workmen, of (Manitoba) 449
——— women: maternity rest (France) 323
——— ——— night work in factories (Sweden). 332
——— workmen's compensation (Anglo-French Convention: U.K.) . . 347
——— ——— ——— (Commonwealth of Australia) 374
——— ——— ——— (France) 317
——— ——— ——— (Quebec) 457–458
——— ——— ——— (Queensland) 381
——— ——— ——— (Western Australia) 400
Labuan assizes (Straits Settlements) 464–465
Land: advances on, limit of (South Australia) 383
——— amendment of law (Madras) 355
——— annuities, redemption of (Western Australia) 401
——— areas for "group selection" (Queensland) 382
——— closer settlement (New South Wales). 377
——— ——— ——— (New Zealand) 405
——— ——— ——— (Victoria). 390–391
——— communal reserves (Cape of Good Hope) 412–413
——— conveyancing and law of property (Bermuda) 460
——— corporate bodies, power to deal with (Cyprus) 483
——— Crown lands: landmarks, erection of (Ceylon) 358

PAGE
Land: Crown lands: leases, registration of (Straits Settlements) . . . 364
——— designation of districts (New Zealand) 405
——— encumbered estates (Bengal) 355
——— expropriation of (Orange River Colony) 423
——— fibre raising (South Australia) 383
——— grants of (Gambia) 432
——— homesteads, protection of (Quebec) 457
——— improvement of (Victoria) 390
——— Irish land purchase (U.K., I.) 348–349
——— leases, applications for (Papua) 404
——— mission stations and communal reserves (Cape of Good Hope) . 412–413
——— native (Fiji) 411
——— ——— consolidation of law (New Zealand) 407
——— prescription, reduction of period to twenty years (Guernsey) . . 351
——— purchase (Western Australia) 401
——— ——— illiterate persons, protection (Grenada) 476
——— sale for non-payment of revenue (British India) 354
——— settled estates (Victoria) 392–393
——— survey, trigonometrical (Fiji) 410
——— surveyors (Tasmania) 388
——— ——— (Western Australia) 400
——— taxes. *See* Taxation.
——— valuation (Tasmania) 386–387
Landlord and tenant: distress, protection of lodgers and under-tenants—
(Gibraltar) . . 482
——— ——— ——— ——— ——— ——— (Tasmania) . 388–389
——— ——— ——— ——— ——— ——— (Victoria) . . 392
Larceny, amendment of law (Hong Kong) 361
Leeward Islands, Legislation of 479–481
Legislation: Empire, of the 485
——— foreign countries, of the 311–339
——— Introduction to 308–310
Legitimacy: bastardy, prepayment of court fees (Grenada) . . . 477
——— legitimation *per subsequens matrimonium* (Fiji) 411
——— ——— ——— ——— ——— (Jamaica) 471
——— ——— ——— ——— ——— (Western Australia) . . 401
Leprosy, notification of (Orange River Colony) 421–422
——— ——— (Seychelles) 371–372
Lèse-majesté, modification of law (Germany) 327
Libel. *See* Defamation.
Libraries: amendment of law (South Australia) 384–385
——— lease for art museums (Ontario) 452
——— travelling, establishment of (Ontario) 455
Licence: boats, for plying (Mauritius) 368
——— cinematograph show premises, to (Ontario) 456
——— ——— ——— ——— (U.K.) 342
——— cocoa and nutmegs, to deal in (Grenada) 477
——— construction of (Natal) 415
——— firearms, to carry (Trinidad and Tobago) 473
——— game, number of animals which may be killed (Somaliland) . . 440
——— hawkers' and pedlars' (Papua) 404

PAGE

Licence: intoxicating liquors, for. *See* Intoxicating Liquors.
——— lighters and boats, for (Antigua) 480
——— private detectives, for (Ontario) 456
——— sale of produce, for (Trinidad and Tobago) 473
——— totalisator, for use of (Transvaal) 430
Local government: municipalities. *See* Municipality.
——— ——— provincial councils (Egypt) 314–315
Lunatics: asylums for lunatics (Bengal) 355
——— declaration of lunacy (Ontario) 453

MADRAS, Legislation of 354–355
Malicious injury to property (Cyprus) 485
——— ——— railways (Hong Kong) 361
Malta, Legislation of 482
Manitoba, Legislation of 448–451
Marriage: amendment of law (Bermuda) 461
——— ——— ——— (Trinidad and Tobago) 475
——— consolidation of law (St. Vincent) 478–479
——— convention with Denmark (Sweden) 332–333
——— deceased wife's sister, with sanction of (Falkland Islands) . . 441
——— ——— ——— ——— ——— (Guernsey) . . . 351
——— judgment of invalidity not to be made by consent (Ontario) . . 455
——— Kandyans, of (Ceylon) 359–360
——— Mexico, in (France) 322
——— ministers qualified to celebrate, return of (Victoria) 397
——— natives, of (Gold Coast) 433
——— Sikh marriages (British India) 354
——— solemnisation, officer, by, of Salvation Army (Newfoundland) . . 459
——— ——— time of (Leeward Islands) 479
——— validation of certain marriages (Transvaal) 426
Master and servant, amendment of law (Transvaal) 431
Matches, white phosphorus prohibited (Isle of Man) 350
Mauritius, Legislation of 368–371
Measures. *See* Weights and Measures.
Medicine and medical practitioner: College of Physicians, constitution of (British Columbia) 446
——— ——— ——— election of medical council (Transvaal) . . 424
——— ——— ——— qualification (Fiji). 410
——— ——— ——— registration (Grenada) 476
——— ——— ——— ——— (Sierra Leone) 434
——— ——— ——— veterinary college (Ontario) 457
——— ——— ——— ——— surgeons (British Guiana) . . 467–468
Merchant shipping. *See* Ship and Shipping.
Midwives, re-examination of (Seychelles) 372
Milk, testing of (Dominion of Canada) 445
Millers, tolls for grinding (Ontario) 455
Mineral oils, concessions of (Gold Coast) 433
Mines and minerals: coal mines, "coal," definition of (Fiji) 409
——— ——— ——— employees, medical examination (Newfoundland) 407
——— ——— ——— regulation of (Victoria). 393–396
——— ——— consolidation of law (South Australia) 383

PAGE

Mines and minerals: discovery of (Newfoundland) 459–460
——— ——— mineral oil, concessions of (Gold Coast) 433
——— ——— plan of mines, keeping by owners (Trinidad and Tobago) . 476
——— ——— private land, on, working of (Queensland) 381
——— ——— regulations (Ontario) 452
——— ——— ——— power of Governor to make (Transvaal) . . 429
Minors. *See* Children and Young Persons.
Mob violence, prevention of (Arkansas) 338
Monopolies, penalising exclusive dealing (Commonwealth of Australia) . . 374
Montserrat, Legislation of 480–481
Mortgages, equitable (East Africa) 437
Mortmain, consolidation of law (Ontario) 455
——— registration of trustees of charity property (Uganda) 439
Motor cars: drivers going on after accident without giving name (Dominion of Canada) 443
——— international passes for (U.K.) 347
——— registration (Victoria) 397–398
——— regulation of traffic (Cyprus) 484
——— ——— ——— (Germany) 328–329
——— ——— ——— (New South Wales) 375
——— ——— ——— (Ontario) 455–456
——— ——— ——— (Victoria) 397
——— tax on (Mauritius) 368
——— theft of (Dominion of Canada) 443
Municipality: amendment of law (Ontario) 455
——— Board of Health (Southern Nigeria) 435
——— consolidation of law (Fiji) 410
——— councillors, election of (Transvaal) 427
——— establishment of (East Africa) 437
——— foundation of townships (Orange River Colony). 418
——— government of (Burma) 357
——— ——— (U.S.) 334–335
——— light and heat (Ontario) 455
——— streets, wood-blocking and asphalting (South Australia) . . . 386
——— water supply (Madras) 355
Museum: amendment of law (South Australia) 384–385
——— creation and maintenance of (Bombay) 355

Name, restrictions on use of "Royal," "Imperial," etc. (Fiji) 408
——— ——— ——— ——— ——— (Grenada) 476
——— ——— ——— ——— ——— (St. Lucia) 477
——— ——— ——— ——— ——— (St. Vincent) 479
——— ——— ——— ——— ——— (Seychelles) 373
——— ——— ——— ——— ——— (Transvaal) 430
——— ——— ——— ——— ——— (Victoria) 399
Natal, Legislation of 414–416
Natives: administration of government among (Natal) 414
——— chiefs (Northern Nigeria) 435
——— ——— (Sierra Leone) 433–434
——— Indian recovery of reserves (Dominion of Canada) 445
——— labour (Nyasaland) 440

PAGE

Natives: labour (Seychelles) 372–373
——— land, consolidation (New Zealand) 407
——— location or reserves, consolidation of law (Cape of Good Hope). . 413
——— ——— ——— eating houses and lodging houses (Orange River Colony) 418
——— ——— ——— trading stations in (Cape of Good Hope) . . 413
——— marriage of (Gold Coast) 433
——— passes, issue of, to (Transvaal) 426
——— protection of (New South Wales) 377–378
——— recruiting native labour (Seychelles) 372–373
——— regulation of native affairs (Papua) 404–405
——— spirituous liquors, prevention of sale to (Gold Coast) . . . 433
Navy: department of naval service constituted (Dominion of Canada) . 444–445
——— discipline (U.K.) 347
——— transfer of property (U.K.) 347
——— Volunteers and Royal Naval Volunteer Reserve (U.K.) . . . 347
——— warship, gift of, to King (New Zealand) 405
Negri Sembilan, Legislation of 367
New South Wales, Legislation of 374–379
New Zealand, Dominion of, Legislation of 405–408
Newfoundland, Legislation of 458–460
Newspapers, security by, to answer possible penalties for libel (Antigua) . 480
——— ——— ——— ——— ——— ——— (Dominica) . . 480
——— ——— ——— ——— ——— ——— (Montserrat) . . 480
——— ——— ——— ——— ——— ——— (St. Christopher and Nevis) . . 481
——— ——— ——— ——— ——— ——— (Virgin Islands) . 481
"Night riders," punishment of (U.S.) 338
Northern Nigeria, Legislation of 435
Norway, Legislation of 329–331
Notaries, public (Ontario) 455
Nuisance, depositing dead or dying person in public place (Straits Settlements) 364
Nyasaland, Legislation of 440

Oaths, swearing with uplifted hand (U.K.) 347
Oculists, regulation of (Manitoba) 450
Old-age pensions (New Zealand) 407
——— ——— (Victoria) 397
Ontario, Legislation of 451–457
Opium: chandu, control of importation and sale (Malay States) . . 366–367
——— consolidation of provisions (Hong Kong) 363
——— intoxicants and, State control of (Straits Settlements) . . . 365
——— smuggling (Burma) 357
——— sale and possession of (Transvaal) 424
Orange River Colony, Legislation of 416–423

Pahang, Legislation of 368
Papua, Legislation of 401–405
Parliament: Legislative Council, admission of public to meetings of (Egypt) . 317
——— ——— ——— duration of (St. Christopher and Nevis) . . 481
——— prorogation (Orange River Colony) 416

PAGE
Partnership: limited (Isle of Man) 350
——— ——— (Western Australia) 400
Pearls, export duty on (Somaliland) 440
Penguins, killing of, made unlawful (Falkland Islands) 441
Pensions, official (Bermuda) 460
——— ——— (Orange River Colony). 423
——— old-age (New Zealand) 407
——— ——— (Victoria) 397
——— widows' and orphans' fund (Mauritius) 369–370
Perak, Legislation of 367
Perjury, fine for (Hong Kong) 361
Personation, punishment for (Ontario) 451
Petroleum: inflammable oils (South Australia). 385–386
——— storage of (British Guiana) 466
——— ——— (St. Christopher and Nevis) 481
——— ——— (Trinidad and Tobago) 473–474
Pharmacy. *See* Drugs and Druggist.
Poisons. *See* Drugs.
Police: field watchmen, supervision of (Cyprus) 484
——— free access to shows and exhibitions (Ontario) 452
——— "night riders" (U.S.) 338
——— reorganisation (Bermuda) 460
——— village watchmen (Egypt) 316
Poll-tax (Uganda) 439
Post: detention of dutiable articles (British Honduras) 470
——— insurance of parcels (Trinidad and Tobago) 475
——— letters contravening revenue law, power to open (Straits Settlements) 364
——— sea postage (Mauritius) 370
——— voting by (Commonwealth of Australia) 373–374
Potato disease, eradication of (Tasmania) 386
Pounds, erection of (Bahamas) 462
——— ——— (Bermuda) 460–461
Prescription, period of, reduced to twenty years (Guernsey) 351
Press, news for, by telegraph, Government subsidy (Dominion of Canada) . 442
Printing, name and address on book or newspaper (Bermuda) 461
Prisons: accommodation (Straits Settlements) 365
——— amendment of law (Dominion of Canada) 445
——— classification of (Orange River Colony) 417
——— convicts, transfer of (Egypt) 316
——— organisation of (Uganda) 439
——— prison farms for vagrants (Jamaica) 471
Private detectives, licence (Ontario) 456
Privy Council, appeal to. *See* Appeal.
Probation of offenders (British Guiana) 468
——— ——— (Manitoba) 450
——— visiting committees, women on (U.K., S.) 348
Protectorate (Southern Nigeria) 436
Public loans (British Honduras) 472
——— (Fiji) 408
Public meetings, right of (Germany) 325–326
Public places: egress from (Ontario) 456

PAGE

Public Places: regulation of (Hong Kong) 362
Public service: admission to, qualifications (Egypt) 316
——— departmental offences (Gambia) 432
——— departments, reorganisation (U.K.) 344
——— guarantee fund of public officers (British Honduras) 470
——— ——— ——— ——— (St. Lucia) 477–478
——— ——— ——— ——— (Sierra Leone) 434
——— High Commissioner, powers to appoint (Commonwealth of Australia) 374
——— pensions (Egypt) 316
——— public officers, only British subjects to be (Ontario) 451
——— superannuation allowances (U.K.) 347–348
——— ——— deductions, refund to women (Natal) 416
Public utilities commission (Quebec) 457
Public works, loan (Fiji) 408
Punjab, Legislation of 356

Quarantine (Barbados) 463, 464
——— (British Guiana) 466
——— (Leeward Islands) 479
——— (Mauritius) 370
Quebec, Legislation of 457–458
Queensland, Legislation of 379–382

Rabbit Boards (Queensland) 380
——— ——— (Western Australia) 400
Racing. *See* Horse Racing.
"Ragging" students, suppression of (U.S.) 339
Railways: Commissioners' salary (Queensland) 380
——— construction (Natal) 414
——— ——— (Northern Nigeria) 435
——— ——— (Orange River Colony) 423
——— ——— (Transvaal) 425
——— employees (Natal) 416
——— extension (Newfoundland) 459
——— ——— (Sierra Leone) 434
——— management (Hong Kong) 362
——— responsibility for accident or delays (Mauritius) 369
——— revenue, apportionment (Victoria) 398–399
——— street (Ontario) 455
Rats: plague carrying, destruction of (Grenada) 476
——— premium for killing (Barbados) 464
Referendum, Union of South Africa (Natal) 414
Registration: architects of (Transvaal) 431
——— births and deaths (St. Vincent) 479
——— businesses of (Transvaal) 429–430
——— deeds, of (St. Vincent) 479
——— ——— (Transvaal) 428
——— premises, of, where stocks and shares dealt with (Transvaal) . . 429
Reward funds (Mauritius) 369
Rice, standard quality for (Papua) 403–404

PAGE
Roads, amendment of law (Montserrat) 481
——— improvement of (U.K.) 343
——— maintenance (Virgin Islands) 481
——— road boards (Fiji) 409
——— ——— financial assistance by (Western Australia) 401
Royal Commission, inquiry (Mauritius) 369
" Royal," " Imperial," etc., restriction on use of (Transvaal) 430
——— ——— ——— ——— ——— (Seychelles). *See also* Companies 373
" Royal mercy," exercise of, by Governor (Newfoundland) 459
Rubber, control of dealings in (Malay States) 367

Sago reserves (Papua) 404
Sailors. *See* Ship and Shipping.
St. Helena, Legislation of 441
St. Lucia, Legislation of 477–478
St. Vincent, Legislation of 478–749
Sale of goods: creditors of vendor, statutory declaration as to (Manitoba) 450–451
——— ——— fertilisers and foodstuffs, warranty (Trinidad and Tobago) . 472
——— ——— produce, licence (Trinidad and Tobago) 473
Sale of land, illiterate persons, protection (Grenada) 476
Saskatchewan, Legislation of 451
Savings Bank, establishment of (St. Christopher and Nevis) 481
Scab, sheep and goats, in (Orange River Colony) 420
Schools. *See* Education.
Scotland (U.K., S.) 348
Sedition, punishment of (Nyasaland) 440
——— ——— (Southern Nigeria) 436
Seduction, proof of service (Ontario) 453–454
Selangor, Legislation of 367
Settled estates (Victoria) 392–393
Seychelles, Legislation of 371
Sheep: dipping after shearing (Victoria) 392
——— scab in (Orange River Colony) 420
Sheriff, consolidation of law (Ontario) 451
Ship and shipping: carriage of goods. *See* Carriage of Goods.
——— ——— deck and load lines (Fiji) 409
——— ——— detention of goods, unpaid freight (Cape of Good Hope) 412
——— ——— maritime credit (France) 317–318
——— ——— merchant shipping: adoption of Imperial Acts in part (Falkland Islands) 442
——— ——— ——— ——— amendment of law (Hong Kong) . . 362
——— ——— ——— ——— detention of foreign vessels (Gibraltar). 481
——— ——— ——— ——— wireless telegraph, regulations (Gibraltar) 481
——— ——— ——— ——— ——— ——— territorial waters, in (Trinidad and Tobago) 475–476
——— ——— seamen: compensation for injuries (Commonwealth of Australia) 374
——— ——— ——— desertion from ship (Southern Nigeria) . . 435
——— ——— ——— insurance of (Denmark) 312

PAGE

Ship and shipping: steamships, extension of provisions as to electrically propelled vessels (British India) 352
——— ——— typhoons, harbours of refuge (Hong Kong) 361
Shops: closing time (Orange River Colony) 422
——— ——— (Transvaal) 431
——— ——— Sunday (Trinidad and Tobago) 473
——— regulation of (New South Wales) 379
——— sanitation of (U.S.) 338
Shows and exhibitions, free access of constables to (Ontario) 452
Slander. *See* Defamation.
Slavery, abolition of (East Africa) 436
Sleeping sickness (East Africa) 438
Societies: Chinese secret societies, state supervision (Straits Settlements) . 364
——— co-operative, exemption from law of companies (Orange River Colony) 422
——— Human Leopard and Alligator (Sierra Leone) 434
Solicitors: admission to practice (Fiji) 408–409
——— women (Newfoundland) 459
Somaliland, Legislation of 440
South Africa, Union of, referendum (Natal) 414
South Australia, Legislation of 383–386
Southern Nigeria, Legislation of 435–436
Sponges: amendment of law (Bermuda) 461
——— raising of (South Australia) 383
Stamps: duty, amendment (New Zealand) 407
——— ——— consolidation of law (Ceylon) 360
——— ——— court fees (Ontario) 451
——— ——— Natal Native Trust and Zululand Native Trust (Natal) . 415
——— licences (Cape of Good Hope) 412
——— ——— trading (Transvaal) 431
Statute law: errors, correction of (Orange River Colony) 423
——— evidence of (Bahamas) 462
——— Indian Acts, when to apply (Uganda) 439
——— interpretation (Malay States) 366
——— reprinting amended ordinances (Papua) 401
——— revision (Barbados) 464–465
——— ——— (British Columbia) 447
Steam boilers, certificate (Hong Kong) 362
——— ——— examination of (Trinidad and Tobago) 473
Stocks and shares: registration of premises, where dealt in (Transvaal) . . 429
——— ——— time bargains in (Germany) 326–327
——— ——— transactions in, authorised exchanges (Egypt) . . 312–313
Straits Settlements, Legislation of 363–366
Succession. *See* Taxation.
Sugar Convention (Gambia) 432
Sunday observance (Cyprus) 483
——— ——— amendment (Quebec) 458
——— shop closing (Trinidad and Tobago) 473
Superannuation allowances (U.K.) 347–348
Surveyors, land (Tasmania) 388
——— ——— (Western Australia) 400
Sweden, Legislation of 332–333

PAGE

TASMANIA, Legislation of 386–389
Taxation: customs (British Guiana) 466
——— ——— (British Honduras) 470, 471
——— ——— (Fiji) 408
——— ——— (Grenada) 477
——— ——— (Jamaica) 471
——— ——— (New Zealand) 407
——— ——— (Papua) 402
——— ——— (Sierra Leone) 334
——— cycles, on (Mauritius) 368
——— death duties, a debt of deceased person (Trinidad and Tobago) . 474
——— ——— ——— creation of, and collection (Grenada) . . . 476
——— ——— estate duty, graduation (New Zealand) 406
——— ——— ——— payment of (Transvaal) 428
——— ——— probate (Victoria) 397
——— ——— "property," definition of (Tasmania) 387
——— ——— succession duty (Ontario) 451
——— excise, wine brandy (Cape of Good Hope) 413
——— house tax (Egypt) 317
——— income tax (New Zealand) 408
——— ——— mining companies (Tasmania) 387
——— land tax, assessment roll, adding lands to (Trinidad and Tobago) . 475
——— ——— increase of (Tasmania) 387
——— ——— lots in townships (Transvaal) 430–431
——— motor cars, on (Mauritius) 368
——— poll tax (Uganda) 439
——— transfer of property, on (Natal) 414
Telegraphs and telephones: contents of messages, disclosure by Government officials (British Honduras) 470
——— ——— "emergency" control of (Commonwealth of Australia) . 373
——— ——— licence to undertake, grant, conditions (Mauritius) . 368–369
——— ——— news by, for press, Government subsidy (Dominion of Canada) 442
——— ——— service of telephones (Fiji) 410
——— ——— telephone, power to execute new works (Trinidad and Tobago) 474
——— ——— wireless, licence (Hong Kong) 362
——— ——— ——— merchant ship in territorial waters (Trinidad and Tobago) 475–476
——— ——— ——— vessels in port (Gibraltar) 481
Theatres and places of public entertainment: cinematograph show premises, licensing of (U.K.) . . 342
——— ——— ——— ——— sale of spirituous liquors (Barbados) . 463

Timber. *See* Woods and Forests.
Time bargains in stocks and shares (Germany) 326–327
Tobacco: cigarettes, prohibition of, in case of minors (U.S.) 335
——— ——— tax on (Cape of Good Hope) 412
——— sale of, to juveniles, punishment of (Ceylon) 360
——— use of, by minors prohibited (U.S.) 335
Totalisator, licence to use (Transvaal) 430
Town planning (U.K.) 344–345

PAGE

Trade: boards (U.K.). 346
——— cold storage, Government guarantee (Newfoundland) . . . 460
——— "combines," investigation (Dominion of Canada) . . . 442–443
——— convention with France (Dominion of Canada) 443
——— inflammable oils (South Australia) 385–386
——— penalising, exclusive dealing (Commonwealth of Australia) . . 374
——— registration of businesses (Transvaal) 429
——— restriction on use of words suggesting Royal or Government patronage (Seychelles). *See also* Companies 373
——— sugar convention (Gambia) 432
——— temporary licences (Barbados) 463–464
——— trading stations in native reserves (Cape of Good Hope) . . . 413
——— unfair competition (Germany) 327
——— unions, registration of (Newfoundland) 459
Transvaal, Legislation of 424–431
Tribes, criminal, proceedings with respect to (Bombay) 355
Trustees, investments by (Ontario) 455
Typhoons, harbours of refuge (Hong Kong) 361

Uganda, Legislation of 438–439
Unfair competition in trade, injunction (Germany) 327–328
United Kingdom, Legislation of 340–351
United States of America, State Legislation of 333–339
University College (Natal) 415
——— incorporation and endowment of (Queensland) 382

Vaccination (Burma) 356–357
——— (Orange River Colony) 421
Vagrants, arrest of (Uganda) 438
——— prison farms for (Jamaica) 471
Vehicles. *See* Hackney Carriage and Motor Cars.
Veterinary college (Ontario) 457
——— surgeons (British Guiana) 467–468
Victoria, Legislation of 389–399
Village watchmen (Egypt) 316
——— works, contribution to (Cyprus) 483
Volunteers. *See* Army.

Wages, workmen, of. *See* Labour.
Wakes, regulation of (Antigua) 480
Water: administrative machinery (Victoria) 391–392
——— board, Rand (Transvaal) 427
——— power (British Columbia) 447
——— waterfalls, concessions of, when permitted (Norway) 331
Weeds. *See* Agriculture.
Weights and measures, metric system, introduction of (Denmark) . . . 312
Western Australia, Legislation of 399–401
Whipping: boys, for (Natal) 415
——— in what cases allowed (British India) 353–354
——— ——— ——— (Hong Kong) 361

PAGE
Widows and orphans: Boer war (Orange River Colony) 422
——— ——— fund (Mauritius) 369–370
Wild animals: in captivity (U.K., S.) 348
——— protection of (Natal) 416
Wild birds: permits to take (Papua) 403
——— protection (Cyprus) 484
Witchcraft, stamping out (East Africa) 436–437
Women: barristers (Newfoundland) 459
——— civil service, refund of superannuation deductions (Natal) . . . 416
——— employees, maternity rest (France) 323
——— night work in factories (Sweden) 332
——— prisons, visiting committees of, on (U.K., S.) 348
——— protection of, and girls (Hong Kong) 362
——— ——— ——— (Malta) 482
——— solicitors (Newfoundland) 459
——— surety bonds, renunciations in (Natal) 415
——— traffic in (Fiji) 410
Woods and forests: bush fires (British Columbia) 447
——— ——— State forests, appropriation of land for (New South Wales) 375–376
——— ——— steam-engine fuel (Cyprus) 483
——— ——— timber rights, purchase of (Papua) 403
Woollen manufacture, encouragement of (Newfoundland) 459
Workmen's compensation (U.K.). *See also* Labour 348
——— dwellings (Queensland) 381-382

NOTES.

Comparative Law in Blue-Books.

Bills of Exchange.

THE blue-book (Cd. 5224, His Majesty's Stationery Office, 1*s.* 3*d.*) containing the correspondence relating to the Conference on Bills of Exchange at The Hague in June 1910 consists not so much of a statement of the law as it is, but rather as it is desired to make it throughout the world. A draft uniform law which has been unanimously accepted by the delegates of more than thirty nations, many of them invested with plenary powers, deserves the most careful consideration from the English mercantile community. On the whole the uniform law approaches English law more nearly than any existing continental code. The points of difference between English law and the proposed uniform law are numerous; some of them are unimportant, while others are of the highest importance as affecting bills which circulate from country to country. From the point of view of the student of comparative legislation the points of difference are of particular interest. The blue-book contains a memorandum by Sir M. D. Chalmers and Mr. F. H. Jackson in which they have set out a translation of the uniform law, employing as far as possible the language of the English Act, and in a parallel column have inserted against each article of the uniform law the corresponding provisions of the Bills of Exchange Act, 1882, or where there is no corresponding provision, a brief explanatory note. The comparative statement is illustrated by observations upon the distinctions between the English Act and the proposed uniform law.

Commercial Travellers.

A new edition (Cd. 5189, His Majesty's Stationery Office, 8*d.*) of a blue-book published in 1906 has been laid before Parliament. It contains a memorandum compiled with the object of showing in a summary form the regulations applicable to British commercial travellers in British India, British self-governing dominions, the Crown colonies and protectorates, and in the principal foreign countries. It also states the special taxes to which commercial travellers are liable, and the Customs treatment accorded to samples brought by them.

Customs.

A revised edition (Cd. 5347, His Majesty's Stationery Office, 4½*d.*) has been published of another memorandum of a similar character to the preceding. It was last issued in 1903. The object is to show in a concise form the regulations in force in all parts of the British Empire and in foreign countries in regard to the production of certificates of origin for imported goods other than sugar, the certification of invoices, etc.

Elections.

In addition to the statements already mentioned[1] the Royal Commission on Electoral Systems received oral evidence (Cd. 5352, His Majesty's Stationery Office, 1*s.* 8*d.*) which included some interesting information as to the law and practice in foreign countries. Senator Count Goblet d'Alviella gave an account of the fight for proportional representation in Belgium which lasted from 1865 to 1900 and explained the results of its working. M. Etienne Flandin, member of the French Senate, described the system of proportional representation recommended by the Commission der Suffrage Universel for adoption in the French Parliament. Dr. Hachett from Western Australia described an election there from his personal knowledge under a system of preferential voting.

British Companies in Egypt.—A correspondent writes:

"A very serious situation, it appears from the *Egyptian Gazette*, has been created in Egypt by the attitude of the Mixed Courts there towards English companies. Briefly stated, it comes to this, that an English company which is carrying on business in Egypt may be treated by a Mixed Court as 'null and non-existent' there, and its books and assets ordered to be handed over to the liquidators of the Mixed Court. This is what recently happened in the case of the Helouan (Egypt) Development Co., Limited. The company was registered in England under the Companies Acts, 1862-1900, and carried on business in Egypt; but it was paralysed and driven into voluntary liquidation by the doctrine of the Mixed Court, enunciated a year or two ago in the City and Agricultural Land Co., Limited, which made it 'null and non-existent.' Thereupon the Mixed Court ordered the liquidator who had been chosen by the shareholders to transfer the books and assets of the company to liquidators appointed by the Mixed Court. A shareholder of the company applied to the Supreme British Consular Court to restrain the liquidator from acting on this order, and the Judge—Cator J.—granted an injunction on the ground that the order was without jurisdiction—as involving a question of 'statut personnel'—and there the matter stands.

"Let us look at it for a moment on general principles. The status of an ordinary person depends on the law of the country of his domicil—the law,

[1] See Journal, N.S. vol. xi. p. 196.

that is, which he has, by fixing his permanent home or residence there, elected to be governed by; and the principle is equally applicable to a company, which is a legal *persona* independent of the members who make up the company. Suppose then that a company with an English domicile wishes to trade abroad. In strict law, as an artificial person, it has no existence outside the territories of the sovereignty which created it; but its existence may be recognised by the law of the country to which it goes to trade, and usually is so recognised on grounds of international comity. In the absence of an express prohibition, foreign companies are generally permitted by the law of civilised nations to sue, to make contracts, and to hold land like domestic citizens or companies. But they may be excluded even as are undesirable aliens, or put on terms, *e.g.* they may be required to give security for the performance of their contracts, or to pay a tax for the permit to trade, or to file documents showing their constitution.

"In any of these ways and many more the country to which a foreign company goes to trade may protect itself, and if Egypt had chosen to adopt this course and close the country to all English companies, or to all English companies not fulfilling certain conditions, it would only have been acting within its strict rights. But this is what it has not done. It has accorded recognition to English companies, and now that the methods of some of these companies have met with the disapproval of the Mixed Courts, those Mixed Courts have assumed jurisdiction to declare such companies 'null and non-existent.' It is clear that this is wrong, and for two reasons. Recognition once granted, expressly or tacitly, is a recognition of the company as a legal *persona*, and it cannot afterwards be treated by a Mixed Court as dissolved automatically. In the next place, matters involving 'statut personnel' are expressly withdrawn from the cognisance of the Mixed Courts, and the status of an English company doing business in Egypt is unquestionably a matter of 'statut personnel' within Art. 9 of the Règlement d'Organisation Judiciaire, and Art. 4 of the Mixed Civil Code. This was the view taken by Cator J., and it is entirely in accordance with the authorities on the subject. If the Egyptian Government desires to protect itself against fraudulent companies emanating from England, it can easily do so by exacting guarantees as to solvency or respectability before admitting them to carry on business in Egypt."

A Soldier's Will.—From the time of the Roman law the soldier *in expeditione* has been a "privileged person" in respect of will-making. In England, before the passing of the Statute of Frauds, a nuncupative will—that is, a verbal statement by a testator of his wishes before witnesses—might be made both by civilians and soldiers. Such wills naturally led to great abuses; but when the power was taken away from civilians it was allowed to remain in the case of soldiers, and now, by the Wills Act "any soldier being in actual military service . . . may dispose of his personal estate as he might have done before the coming into operation of this Act." It makes

no difference that he has not attained the age of twenty-one. New South Wales has an Act in similar terms, and the question has recently been raised as to the meaning of "actual military service" (*In re Thompson*). The soldier-testator in question had received a commission in a volunteer regiment, and had gone into residence at the barracks. Subsequently a camp was formed, and the testator was drafted into it among others desirous of going to South Africa to serve under the Imperial Government in the Boer War. On March 19, 1901, he received orders to embark for South Africa, and on the 21st he embarked. The will in question was made between these two dates—on March 20. On these facts, Mr. Justice Street held that the testator was in "actual military service" at the date of his will. The true test, he held, is whether before the will was made the soldier has taken some step, under orders, in view of, and preparatory to joining the forces in the field, and here he had by going into camp for embarkation. This is substantially the same view as that taken by Sir Francis Jeune, on the construction of the English Wills Act, in *In the Goods of Hiscock*, [1901] P. 78.

The "Jahrbuch des Oeffentlichen Rechts."—Among the many interesting articles in the latest volume of the *Jahrbuch des Oeffentlichen Rechts* is one by Prof. Ullmann on "Die Fortbildung des Seekriegsrecht" by the Declaration of London: a careful study of the provisions and effects of that instrument, with a no less careful abstinence from any precise appreciation of its value. Prof. Huber of Zurich contributes a suggestive and elaborate paper entitled "Beiträge zur Kenntnis der soziologischen Grundlagen der Völkerrecht und Staatengesellschaft," one of the many signs that great changes in regard to the foundations of international law are in progress. The Review of Legislation of the various parts of the German Empire will give to many readers a new idea of the extent and variety of the legislation in Saxony and Bavaria.

Burge's "Colonial and Foreign Law: Marriage."—It is significant of the growing importance of marriage problems that out of the six volumes which are to make up the second edition of Burge's *Colonial and Foreign Law*, the whole of this bulky third volume is devoted to Marriage. Besides the learned editors—Mr. Justice Renton and Mr. G. G. Phillimore—sixteen experts in foreign and colonial law have been called in aid, and the law of nearly every civilised nation in the world is passed in review. Such a survey is a most valuable contribution to the comparative law of the subject. One thing emerges from it quite clearly—marriage can never be a merely consensual contract. The State is too deeply concerned with the sanctity of family life—"the highest and best school," as Cardinal Manning called it—to leave marriage to the caprice of the individual spouses, to be made a mere temporary union and relaxed or dissolved at will. All systems of law are at one in emphasising the importance of maintaining marriage inviolable as far as possible: not only on the sacramental theory, but for good practical reasons. In the present volume we have collected the grounds of divorce among

the nations. Varied as they are in detail, they have this in common, that they are offences of a kind which make the married life intolerable or defeat the ends for which it was ordained. If there be overmuch rigour, many may decline altogether, it has been thought, to take the risk of marriage at such a price—like the learned Selden who calls marriage a "desperate thing." "The frogs in Æsop," he says, "were extreme wise. They had a great mind to some water, but they would not leap into the well, because they could not get out again."

The Coming Imperial Conference.—Interest in the approaching Imperial Conference will be quickened by the publication of the agenda, which has recently appeared as a White Paper. The subjects are many and various, but they are best summarised in a dispatch of the Secretary of State for the Colonies to the Governors-General and Governors of Canada, Australia, New Zealand, South Africa, and Newfoundland. It runs as follows:

1. As at present advised His Majesty's Government propose to suggest for discussion at the Conference the following subjects:

The position of British Indians in the Dominions;
Labour Exchanges in relation to the Dominions;
Uniform design for stamps;
The arrangements for expulsion of undesirable aliens.

2. In my telegram of December 19 I made certain observations as to the method in which the suggested subjects might be dealt with at the Conference. It may, however, be useful that, following the precedent set by Lord Elgin in his dispatch of January 4, 1907, I should summarise the subjects brought forward, and group them with a view to a statement of the agenda of the Conference. This must be provisional for the present, in order to leave room for the eventuality of additional subjects being proposed by the Dominion of Canada, the Union of South Africa, and by His Majesty's Government themselves.

3. It is proposed that the Conference should open on Monday, May 22, and it will probably be convenient that its proceedings should, if possible, conclude before the date of the Coronation, that is, Thursday, June 22. This will afford a period of four clear weeks for purposes of discussion. In 1907 the proceedings of the Colonial Conference occupied four weeks, *i.e.* from April 15 to May 14. The Conference then met on fifteen days, and I apprehend that the conditions as regards facilities for meeting will be much the same on the present occasion. It would appear, therefore, that there should be room for not less than fifteen meetings during the period available before June 22. In 1907 there was a separate discussion at the Treasury respecting certain subjects in which their Lordships had a special interest. These subjects were, however, brought up again at the main Conference.

4. The principle laid down by Lord Elgin in his dispatch of January 4, 1907, was to give preference to subjects proposed by the Dominions and to rank such subjects according to the number of Dominions proposing them, regard, of course being had to the intrinsic importance of the subjects and to the possibility of arriving at a definite result by discussion. I apprehend that these principles may again be followed with advantage; and accordingly the subjects put forward by the Commonwealth of Australia, the Dominion of New Zealand, and Newfoundland may be taken provisionally as the basis for the agenda.

5. Two Dominions propose what are either the same subject or branches of the same subject, viz. —

(*a*) Merchant Shipping and Navigation Laws.	New Zealand (13). Australia (3).	
(*b*) All Red Route	New Zealand (10). Newfoundland.	
(*c*) Uniformity of various Laws .	New Zealand (12). Australia (4) and (5).	
(*d*) Imperial Court of Appeal . .	New Zealand (11). Australia (11).	
(*e*) State-owned Atlantic Cable .	New Zealand (6). Australia (6).	(Also State-owned line across Canada.)
(*f*) Reciprocal legislation as regards Conspiracy	Australia (9).	
And as regards Destitute Persons	New Zealand (12).	

The following subjects are proposed by one Dominion:

New Zealand:

Publicity of proceedings except as to confidential matters;
Imperial representation of oversea Dominions;
Reconstruction of the Colonial Office;
Interchange of Civil Servants;
Universal penny postage;
Cheapening of cable rates;
Imperial wireless telegraph system;
Double Income Tax and Stamp Duty on Colonial Bonds.

Australia:

Commercial relations generally and in respect of British shipping;
Declaration of London;
Emigration;
Currency and coinage;
Co-operation between the naval and military forces of the Empire and the status of Dominion navies.

6. In my dispatch of January 12 I have expressed some doubt whether uniformity in the matter of Patent Law can be usefully discussed on the present occasion; but it will clearly be necessary that there should be some consideration of the question whether further uniformity in legislation can be obtained in the matters dealt with under head (*c*) above, and whether reciprocity in legislation can be arranged under head (*f*). The resolution of the Commonwealth of Australia as to naturalisation leads me to observe that this question of uniformity of law is essentially a technical question, and as such may more properly be remitted to a Committee of the full Conference sitting as a subsidiary Conference. His Majesty's Government have expressed the hope that your Prime Minister may be accompanied by other members of the Ministry; and it is reasonable to anticipate that these Ministers may include among them those within whose province the question of uniformity of laws in the matters indicated properly falls. There are certain other subjects which also lend themselves to treatment, if necessary, by the method of subsidiary Conferences; for example, the question

as to undesirable aliens and the postal subject suggested by His Majesty's Government.

7. There would remain for the consideration of the full Conference the following matters:

Merchant Shipping and Navigation Laws;
Cheaper cable rates;
All Red Route;
Imperial Court of Appeal;
State-owned Atlantic Cable and Telegraph line across Canada;
Publicity of Proceedings;
Imperial Representation;
The reconstruction of the Colonial Office;
Interchange of Civil Servants;
State-owned British Wireless Telegraph Stations;
Double Taxation, and Stamp Duties on Colonial Bonds;
Commercial Co-operation for the encouragement of British Manufactures and Shipping.
The Declaration of London;
Emigration and the position of Labour Exchanges;
Currency and Coinage;
Co-operation between the naval and military forces of the Empire and the status of Dominion navies;
The position of British Indians in the Dominions.

8. The subjects above set forth as a basis for agenda of the Conference are of varying importance, but it seems clear that there must come first the question of the publicity of the proceedings of the Conference and the resolutions of New Zealand on the subject of Imperial representation, the reconstruction of the Colonial Office, and the interchange of Civil Servants, which have relation to the constitution of the Conference itself. There might follow the subjects proposed by two Dominions, viz.—

Merchant Shipping and Navigation Laws;
The All Red Route;
The Imperial Court of Appeal;
The State-owned Atlantic Cable and line across Canada.

Amongst the remaining subjects proposed by one Dominion or by His Majesty's Government a greater measure of importance appears to attach to the subjects of co-operation between the naval and military forces of the Empire and the status of Dominion navies, the position of British Indians, co-operation in commercial matters, and the support of British trade and shipping, emigration, the Declaration of London, State-owned wireless telegraph rates, and the cheapening of cable rates. These subjects might accordingly have the next place on the agenda, which would be completed, should time allow, by the inclusion of the subjects of universal penny postage, coinage and currency, and double taxation and stamp duties on colonial bonds.

I have, etc.,
L. HARCOURT.

"American International Law."—We have received a copy of Dr. Alvarez's book entitled *Le Droit International Américain*, in which he

seeks to prove that there is such a form of international law, and to lay down its principles and to distinguish it from international law generally. Dr. Alvarez goes so far as to maintain that there is, or will be, a special international law for Asia and for Africa. One sentence will show the basis of his argument: "L'Asie et l'Afrique, n'étant pas composées uniquement d'États indépendants, et n'ayant pas à leur base une doctrine de Monroe, il s'ensuit que le droit international n'est pas, comme en Amérique, l'expression de la volonté des États. En Afrique elle dérive des accords des États de l'Europe, notamment de la Conférence de Berlin de 1885, de la Conférence de Bruxelles de 1890, et aussi des règles spéciales qu'ils édictent pour leurs possessions africaines."

International Association of Advocates.—We have received a copy of the *Zeitschrift des Internationalen Anwalt-Verbandes*, an association which has existed for seven years, and which is intended to promote "solidarity" between the Bars of all countries and to elevate their position. Among the valuable articles perhaps the most interesting is that by Dr. Simon Messinger of Buda-Pest, who points out and discusses the many common interests of barristers in all countries. From an article discussing the well-worn theme of the morality of advocacy, it appears that in Germany, as with us, there is wild talk on the subject. The writer quotes a censor of the profession, who says that if he had to choose whether his son was to be a "Rechtsanwalt" or a criminal, he would prefer him to be the latter. The *Zeitschrift* contains much interesting information as to legal matters, particularly such as affect the Bar in many countries.

Unworthy Heirs in Roman-Dutch Law.—There is a whole chapter of Roman-Dutch law on "unworthy heirs" to which our English law is, speaking generally, a stranger. Any bequest, for instance, by an adulterer to an adulteress or *vice versa* is prohibited by Roman-Dutch law, the ground, of course, being that any influence that a woman may possess over a man living in a state of adultery should not be used to the prejudice of those who are related to him by blood or otherwise, and therefore reasonably entitled to succeed. Children procreated in adultery or incest may not take or inherit from their parents. The case of natural children is different; they may succeed. Persons who have married under the legal age without the consent of father, mother, or guardian are under the same disability. Nor can persons who have contracted a clandestine marriage or eloped together benefit one another. Public policy in these cases imposes the disability to protect the legitimate heirs and to discourage illicit intercourse. No one, again, who has helped to kill another or has given counsel or assistance for the purpose can inherit any property from such other by testament, or profit by his own wrongdoing. Here English law is at one with Roman-Dutch. In a recent case in the Supreme Court of Natal—*Ramalutclumil* v. *Estate Ramiah*—an Indian who had come with his wife and child to live in Natal took a woman to live with him in adultery, and on his death left her all his property.

The property was claimed by the child, and her claim allowed by the Court on the ground that she was *indigna*. It was urged that she was a concubine lawfully taken under Indian law, and that the Indian view of concubinage differs widely from Western ideas on the subject; that Pothier, while classing a prostitute as *indigna*, distinguishes a concubine; but the Court held that there was but one law in Natal in this matter for European and Indian alike. The Indian coming to the Colony takes the law as he finds it. This seems right. It might lead to a lamentable confusion of morals if the Court were once to recognise the status of concubinage.

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